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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1866.

No. 529. 210.

S. H. WILLIAMS, TREASURER OF THE TOWN OF GLASTONBURY, HARTFORD COUNTY, STATE OF CONNECTICUT,
PLAINTIFF IN ERROR.

v.

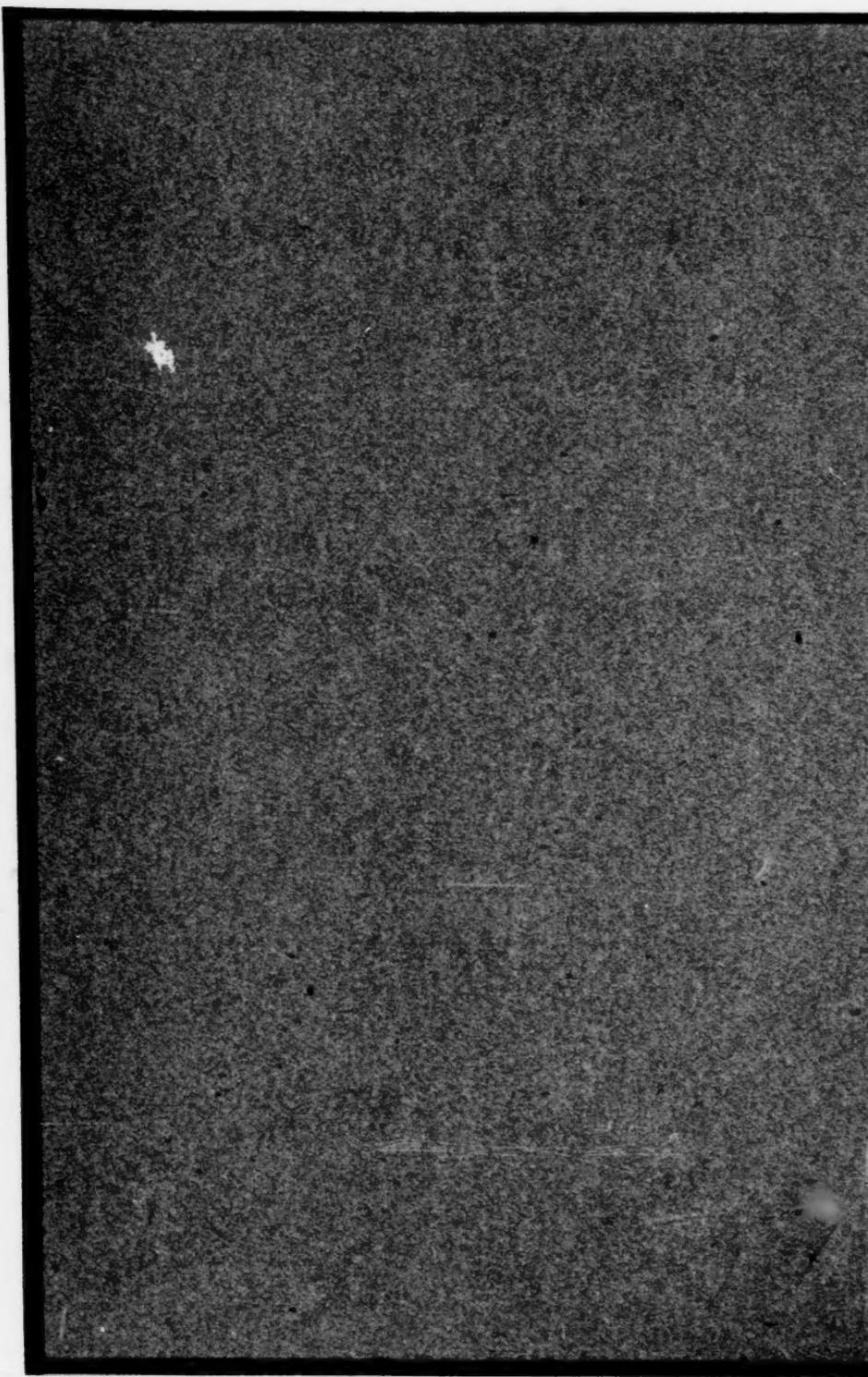
ARTHUR F. EGGLESTON, ATTORNEY FOR THE STATE OF
CONNECTICUT.

IN ERROR TO THE SUPREME COURT OF ERRORS OF THE STATE OF
CONNECTICUT.

FILED JULY 26, 1866.

(16,849.)

529



(16,349.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1896.

No. 570.

S. H. WILLIAMS, TREASURER OF THE TOWN OF GLASTONBURY, HARTFORD COUNTY, STATE OF CONNECTICUT,
PLAINTIFF IN ERROR,

vs.

ARTHUR F. EGGLESTON, ATTORNEY FOR THE STATE OF
CONNECTICUT.

IN ERROR TO THE SUPREME COURT OF ERRORS OF THE STATE OF
CONNECTICUT.

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1a THE UNITED STATES OF AMERICA, ss:

The President of the United States of America to the honorable the judges of the supreme court of errors of the State of Connecticut,
Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of errors of the State of Connecticut, before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit bewteen Arthur F. Eggleston of Hartford, Connecticut, attorney for the State of Connecticut, vs. S. H. Williams, treasurer of the town of Glastonbury, Hartford county, State of Connecticut, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under the United States, and the decision was against their validity, or wherein was drawn in question the validity of a statute of or an authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties, or the laws of the United States, and the decision was in favor of such their validity, or wherein was drawn in question the construction of a clause of the Constitution or of a treaty, or statute of or commission, held under the United States, and the decision was against the title, right, privilege, or exemption, specially set up or claim- under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said S. H. Williams, treasurer of the said town of Glastonbury, as by his complaint appears, we being willing that error, if any hath been, should be duly corrected, and full and

2a speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid with all things concerning the same to the Supreme Court of the United States, together with this writ so that you have the same at Washington on the 12th day of August, 1896, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States, should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the 16th day of July, in the year of our Lord one thousand eight hundred and ninety-six.

[Seal of Circuit Court, Connecticut.]

E. E. MARVIN,

*Clerk of the Circuit Court of the United States
for the District of Connecticut.*

Allowed and ordered to be a supersedeas and that there be a stay

of execution, and of all proceedings in said case pending the foregoing writ of error, by—

CHARLES B. ANDREWS,
*Chief Justice of the Supreme Court of Errors
of the State of Connecticut.*

3a Supreme Court of the United States.

S. H. WILLIAMS, Treasurer of the Town of Glastonbury, State of Connecticut, Plaintiff in Error,

vs.

ARTHUR F. EGGLESTON, of Hartford, Connecticut, Attorney for the State of Connecticut, Defendant in Error.

Know all men by these presents that we, S. H. Williams, of the town of Glastonbury, county of Hartford, and State of Connecticut, as principal and Thomas H. L. Tallcott, Hector Chapman, and Alpheus D. Clark, all of said town as sureties, are held and firmly bound unto the defendant, Arthur F. Eggleston, attorney for the State of Connecticut, defendant in error in the above-entitled action, in the sum of \$500 to be paid to the said Arthur F. Eggleston, attorney as aforesaid, his executors, administrators, or successors. To the which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally and our, and each of our heirs, executors, and administrators firmly by these presents.

Whereas the above-named S. H. Williams, treasurer of the town of Glastonbury, Connecticut, has sued out, and presented a writ of error to the Supreme Court of the United States, to reverse the judgment and decree rendered in the above-entitled cause by the supreme court of errors of the State of Connecticut, for the first judicial district:

4a Now therefore the condition of this obligation is such that if the said S. H. Williams, treasurer of the town of Glastonbury, Connecticut, shall prosecute his writ of error to effect and answer all damages and costs if he fail to make good his plea, then this obligation to be void; otherwise the same shall be and remain in full force and virtue.

In witness whereof we have hereunto set our hands and seals this 16th day of July, A. D. 1896.

S. H. WILLIAMS. THOMAS H. C. TALLCOTT. HECTOR CHAPMAN. ALPHEUS D. CLARK.	[L. S.] [L. S.] [L. S.] [L. S.]
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The foregoing bond is hereby approved.

CHARLES B. ANDREWS,
*Chief Justice of the Supreme Court of Errors
of the State of Connecticut.*

STATE OF CONNECTICUT,
First Judicial District. }

CLERK'S OFFICE, SUPREME COURT OF ERRORS.

A duplicate of the foregoing bond is on file in this office.
Hartford, Conn., July 24th, 1896.

C. W. JOHNSON,
Clerk of the Supreme Court of Errors.

5a UNITED STATES OF AMERICA, ^{ss}:

To Arthur F. Eggleston, of the town and county of Hartford and State of Connecticut, attorney for the said State of Connecticut, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden at Washington, on the 12th day of July, 1896, pursuant to a writ of error filed in the clerk's office of the supreme court of errors of the State of Connecticut, wherein S. H. Williams, treasurer of the town of Glastonbury, Connecticut, is plaintiff in error, and you as such attorney are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff as in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 16th day of July, in the year of our Lord one thousand eight hundred and ninety-six.

CHARLES B. ANDREWS,
*Chief Justice of the Supreme Court of Errors
of the State of Connecticut.*

I hereby this 17th day of July, A. D. 1896, accept due personal service of the foregoing citation, waiving notice.

ARTHUR F. EGGLESTON,
Attorney for the State of Connecticut.

6a To all to whom these presents shall come, Greeting:

Know ye that I, Charles W. Johnson, clerk of the supreme court of errors of the State of Connecticut, first judicial district, in and for the county of Hartford, in said State, having inspected the files and records in said court in my custody, do find their remaining on file a certain record in a cause wherein Arthur F. Eggleston, of Hartford, in said State, attorney for the State of Connecticut, at the relation of Morgan G. Bulkeley, Meigs H. Whaples, John G. Root, John H. Hall of said Hartford, James W. Cheney of Manchester, in said State, Alembert O. Crosby of Glastonbury, in said State, Charles W. Roberts of East Hartford, in said State, and Lewis Sperry of South Windsor, in said State, commissioners for the Connecticut River bridge & highway district, was plaintiff and S. H. Williams treasurer of said town of Glastonbury in said Hartford

county, State of Connecticut, was defendant, in the words and figures following, to wit:

[Seal Supreme Court of Errors, Con.]

CHARLES W. JOHNSON,
*Clerk of the Supreme Court of Errors for
 the First Judicial District, County of
 Hartford, State of Connecticut.*

1 Superior Court, Hartford County, October 16, 1895.

STATE *ex Rel.* MORGAN G. BULKELEY *et al.*, Commissioners for the }
 Connecticut River Bridge and Highway District, }
 vs.
 S. H. WILLIAMS, Treasurer of the Town of Glastonbury. }

Motion for Writ of Mandamus.

To the honorable superior court, now in session at Hartford, within and for the county of Hartford, comes Arthur F. Eggleston, State's attorney for the county of Hartford and State of Connecticut, at the relation of Morgan G. Bulkeley, Meigs H. Whaples, John G. Root, John H. Hall of Hartford, James W. Cheney of Manchester, Alembert O. Crosby of Glastonbury, Charles W. Roberts of East Hartford, and Lewis Sperry of South Windsor, as they are the commissioners for the Connecticut River bridge and highway district, and shows to the court:

1. That the said Morgan G. Bulkeley, Meigs H. Whaples, John G. Root, John H. Hall, James W. Cheney, Alembert O. Crosby, and Lewis Sperry, are and have been since the 28th day of June, 1895, the board of commissioners for the Connecticut River bridge and highway district, appointed and organized as such board pursuant to chapter 343 of the Special Acts of 1895, and that the said Charles W. Roberts was thereafter and prior to the action of said commissioners herein set forth, duly appointed as one of said commissioners, in the place of John A. Stoughton, who resigned and refused to act.

2. Under the provisions of said chapter three hundred and forty-three of the Special Acts of Connecticut, approved June

28, 1895, it became the duty of said commissioners, and they had full authority thereafter to erect new bridges along the highway across the Connecticut river at Hartford, as established and described in a decree of the superior court of Hartford county, passed on the 10th day of June, 1889, which said decree is made a part of this application, and is marked "Exhibit A," to reconstruct, raise and widen the causeway, and approaches appurtenant to and a part of said highway, to provide for the ordinary support and maintenance of said highway, and to do all things necessary for the construction, reconstruction, care, maintenance, and improvement of said highway, and for the ordinary support and maintenance thereof, and to make any and all orders and contracts, and incur expenses to that end as by the provisions of said special act it fully

appears, which said act is made a part of this application, and is marked "Exhibit B."

3. Said highway is a public highway.

4. It was the duty of the town of Glastonbury and its treasurer, on and after June 28, 1895, to obey any and all orders made and passed by the said "the commissioners for the Connecticut River bridge and highway district," pursuant to the provisions of said chapter three hundred and forty-three of the Special Acts of Connecticut, and it was the duty of the treasurer of said town to pay to said commissioners or their treasurer such sums as should be required by said commissioners as its said town's proportion of any and all expense incurred by direction of said commissioners for the ordinary support and maintenance of said highway, whenever the said commissioners should determine with regard thereto, and pass and issue, and present to said treasurer of said town their order therefor, pursuant to the terms and provisions of said special act as set forth in paragraph 2.

5. On and after the 28th day of June, 1895, and prior to the 14th day of September, 1895, the said the commissioners for the Connecticut River bridge and highway district incurred expenses

3 to the amount of five hundred dollars (\$500), for the ordinary support and maintenance of said highway, as authorized and empowered by chapter 343 of said Special Act of 1895, and thereafter said commissioners duly determined by resolution passed on the 14th day of September, 1895, a copy of which is annexed and made a part of this application marked "Exhibit C," the proportion of said expense to be paid by the town of Glastonbury to be the sum of fifteen dollars.

6. On the 14th day of September, 1895, said commissioners by their order duly passed and made on said day pursuant to the authority of said chapter 343, of Special Acts of 1895, ordered and required the said town of Glastonbury to pay by its treasurer to the said the commissioners for the Connecticut River bridge and highway district, or to their treasurer, the said sum of fifteen dollars (\$15), the same being the said proportion payable by the town of Glastonbury as set forth in paragraph 5, which said order, so made and issued by said commissioners, is attached to and made a part of this application, marked "Exhibit D."

7. On the 21st day of September, 1895, said order was duly presented to the town of Glastonbury and to its treasurer by the treasurer of the said the commissioners for the Connecticut River bridge and highway district, being thereunto duly authorized by said commissioners and payment thereof demanded, but the treasurer of said town of Glastonbury refused to pay the same, and still does refuse and decline to pay to said commissioners, or their treasurer, the said sum mentioned in said order, and the same has never been paid.

8. The treasurer of the town of Glastonbury is S. H. Williams.

9. Said attorney moves this court to issue a writ of mandamus, requiring said S. H. Williams as treasurer of the town of Glastonbury to pay to the said the commissioners for the Connecticut River

bridge and highway district the sum of fifteen dollars, and in all respects to obey the said order of said commissioners, and conform to the laws of this State with regard thereto, or to signify cause to the contrary therefor to this court, to be holden at Hartford within and for the county of Hartford, on the first Tuesday of November, 1895.

Dated at Hartford this 16th day of October, 1895.

ARTHUR F. EGGLESTON,
State's Attorney for Hartford County.

STATE OF CONNECTICUT, }
County of Hartford, } ss:

HARTFORD, October 16, 1895.

Personally appeared, Lewis Sperry, and made solemn oath to the truth of the allegations in the foregoing application and motion for a writ of mandamus to the best of his knowledge and belief, before me,

GEORGE P. MCLEAN,
Commissioner of the Superior Court.

Alternative Writ of Mandamus.

Hartford County Superior Court, October Term, 1895.

To wit, this 16th day of October, 1895.

To S. H. Williams, treasurer of the town of Glastonbury, Greeting:

1. Whereas, the said Morgan G. Bulkeley, Meigs H. Whaples, John G. Root, John H. Hall of Hartford, James W. Cheney of Manchester, Alembert O. Crosby of Glastonbury, Charles W. Roberts of East Hartford, and Lewis Sperry of South Windsor, are and have been since the 28th day of June, 1895, the board of commissioners for the Connecticut River bridge and highway district, appointed and organized as such board pursuant to chapter 343, of the Special Acts of 1895, and the said Charles W. Roberts was thereafter and prior to the action of said commissioners appointed as one of said commissioners in the place of John A. Stoughton, who resigned and refused to act.

5 2. And, whereas, under the provisions of said chapter 343 of the Special Acts of Connecticut, approved June 28, 1895, it became the duty of said commissioners, and they had full authority thereafter to erect new bridges along the highway across the Connecticut river at Hartford, as established and described in a decree of the superior court for Hartford county, passed on the 10th day of June, 1889, which said decree is made a part of the foregoing application and is marked "Exhibit A," to reconstruct, raise, and widen the causeway, and approaches appurtenant to and a part of said highway, to provide for the ordinary support and maintenance of said highway, and to do all things necessary for the construction, reconstruction, care, and maintenance, and improvement of said highway, and for the ordinary support and maintenance

thereof, and to make any and all orders and contracts, and incur expenses to that end as by the provisions of said special act it fully appears, which said act is made a part of the foregoing application, and is marked "Exhibit B."

3. And, whereas, said highway is a public highway.

4. And, whereas, it was the duty of the town of Glastonbury and its treasurer, on and after June 28, 1895, to obey any and all orders made and passed by the said "the commissioners for the Connecticut River bridge and highway district" pursuant to the provisions of said chapter three hundred and forty-three, of the Special Acts of Connecticut, and it was the duty of the treasurer of said town to pay to said commissioners, or their treasurer, such sums as should be required by said commissioners as its said town's proportion of any and all expenses incurred by direction of said commissioners for the ordinary support and maintenance of said highway, whenever the said commissioners should determine with regard thereto, and pass and issue, and present to said treasurer of said town, their order therefor, pursuant to the terms and provisions of said special act as set forth in paragraph 2.

5. And, whereas, on and after the 28th day of June, 1895,
6 and prior to the 14th day of September, 1895, the said the commissioners for the Connecticut River bridge and highway district incurred expenses to the amount of five hundred dollars (\$500), for the ordinary support and maintenance of said highway, as authorized and empowered by chapter 343 of said Special Act of 1895, and thereafter said commissioners duly determined by resolution passed on the 14th day of September, 1895, a copy of which is annexed and made a part of this application marked "Exhibit C," the proportion of said expense to be paid by the town of Glastonbury to be the sum of fifteen dollars.

6. And, whereas, on the 14th day of September, 1895, said commissioners, by their order duly passed and made on said day pursuant to the authority of said chapter 343, of Special Acts of 1895, ordered and required the said town of Glastonbury to pay by its treasurer to the said the commissioners for the Connecticut River bridge and highway district, or to their treasurer, the said sum of fifteen dollars (\$15), the same being the said proportion payable by the town of Glastonbury as set forth in paragraph 5, which said order, so made and issued by said commissioners, is attached to and made a part of this application, marked "Exhibit D."

7. And, whereas, on the 21st day of September, 1895, said order was duly presented to the town of Glastonbury and to its treasurer by the treasurer of the said the commissioners for the Connecticut River bridge and highway district, being thereunto duly authorized by said commissioners, and payment thereof demanded, but the treasurer of said town of Glastonbury refused to pay the same, and still does refuse and decline to pay to said commissioners, or its treasurer, the said sum mentioned in said order, and the same has never been paid.

8. And, whereas, the treasurer of the town of Glastonbury is S. H. Williams.

as by the application on file of Arthur F. Eggleston, State's attorney for Hartford county, made at the relation of the said the
7 commissioners for the Connecticut River bridge and highway district, it is understood.

Now, therefore, that due and speedy justice may be done in this behalf it is required and enjoined of you, the said S. H. Williams, as treasurer of the town of Glastonbury, that before the first Tuesday of November, 1895, you do pay to the commissioners for the Connecticut River bridge and highway district the sum of fifteen dollars (\$15), as is required by said order of the said the commissioners for the Connecticut River bridge and highway district, and in all respects to obey the order of said commissioners and conform to the laws of this State with regard thereto, or signify cause to the contrary thereof to this court, to be holden at Hartford within and for the county of Hartford, on the first Tuesday of November, 1895, at 10 o'clock in the forenoon.

By order of the court,

GEORGE A. CONANT,
Assistant Clerk.

To the sheriff of the county of Hartford, his deputy, or to any indifferent person, Greeting :

By authority of the State of Connecticut, you are hereby commanded to notify said S. H. Williams, treasurer of the town of Glastonbury, of the pendency of said motion and application for a mandamus, and of the above and foregoing order of alternative mandamus by forthwith leaving with said S. H. Williams, a true and attested copy of said motion for an order of mandamus, and of this order of notice.

Hereof fail not, but due service and return make.

Dated at Hartford this 16th day of October, 1895.

By order of court,

GEORGE A. CONANT,
Assistant Clerk.

8 STATE OF CONNECTICUT, }
County of Hartford, } ss:

GLASTONBURY, CONN., October 17, A. D. 1895.

Then and by virtue hereof, I left a true and attested copy of this motion for an order of mandamus, and of this order of notice with and in the hands of S. H. Williams, treasurer of the town of Glastonbury in said town of Glastonbury.

Attest:

EDWIN J. SMITH, *Sheriff.*

Fees.

Copies.....	\$3 00
Endorsements.....	2 40
Service.....	12
Travel.....	2 00
Time spent.....	1 50
	—
	\$9 02

EXHIBIT "A."

(Annexed to motion for writ of mandamus.)

Final Decree.

Superior Court, Hartford County, June 10, 1889.

STATE OF CONNECTICUT }
 vs. }
THE HARTFORD BRIDGE COMPANY. }

This proceeding authorized by chapter CXXVI of the Public Acts of 1887, being an act entitled "An act to establish free public highways across the Connecticut river in Hartford county," came to this court upon complaint of the State, brought in accordance with said act on the first Tuesday of October, 1887, and by continuance to the present term.

The court finds that the complaint was duly served and all notices and other proceedings required by said act and by law were duly given and taken.

That Edward W. Seymour, Frederick J. Kingsbury, and Thomas Sanford were duly appointed commissioners to lay out and establish highways across the Connecticut river where the toll-bridge of said Hartford Bridge Company now is and across said bridge and across and along the causeways and approaches appurtenant to and connected therewith, and for the other purposes mentioned in said act.

That the said commissioners filed their report August 14, 1888, as on file. That said commissioners laid out and established a highway as follows, viz: "Beginning in the city of Hartford on the east side of Commerce street, as laid out, and at the northwest corner of land occupied by, and supposed to belong to, the New York, New Haven & Hartford Railroad Company; thence easterly in the north line of said last-mentioned land to the Connecticut river, said line being parallel to and thirty-nine and a half ($39\frac{1}{2}$) feet south of and distant from a line drawn from said Commerce street to said river extending along the south face of said bridge company's toll-house; thence easterly in the south line of the drawbridge and bridge of the said Hartford Bridge Company to the east bank of said Connecticut river; thence southerly along the east bank of said river about seven hundred and six (706) feet to a dock; thence easterly to the northeast corner of said dock; thence in a straight line southerly to the north line of the Tolland turnpike at a point two hundred (200) feet from the southwest corner of land of George W. Darlin; thence easterly in the line of said Tolland turnpike to land of said Darlin; thence northeasterly in the line of said Darlin's land to the southerly line of the causeway of said bridge company at a point twenty-eight (28) feet easterly from the face of the east abutment of the first dry bridge east of the river; thence easterly

in the southerly line of said causeway along the land of said Darlin, of highway, of land of Frederick Johnson, of land formerly of Luther Morse, deceased, of land of Asher S. Bailey, of highway, and of other land of said Darlin to the northwest corner of land deeded by Joseph M. Merrow to the said bridge company; thence southerly in

the westerly line of said last-mentioned land and of land
10 deeded to said bridge company by — Goodwin to the northerly line of said Tolland turnpike; thence easterly in the northerly line of said turnpike about six hundred and fifty-five (655) feet to the southerly line of said causeway; thence easterly in the south line of said causeway about two hundred and thirty-seven (237) feet to the northwest corner of a piece of land deeded by Nathan Merrow to the said Hartford Bridge Company; thence southerly in the westerly line of said last-mentioned land about one hundred and twenty-two and three-quarters (122.75) feet; thence easterly in the southerly line of said last-mentioned land about three hundred and fifty-four and three-quarters (354 $\frac{3}{4}$) feet to the westerly line of land deeded to the said bridge company by Patrick Garvan; thence southerly in the westerly line of said Garvan's land about five hundred and thirty-one and three-quarters (531.75) feet to a stone; thence easterly about nine hundred and forty-seven (947) feet along the southerly line of said land deeded by said Garvan as aforesaid to a corner marked by a stone; thence northerly along the easterly line of said last-mentioned land about five hundred and sixteen (516) feet to the south line of said causeway; thence easterly in the south line of said causeway and along the line of land of Dominic Flynn, A. G. Olmstead, and First Ecclesiastical Society of East Hartford about fifteen hundred and thirty-five (1,535) feet to the west line of Main street in East Hartford village; thence northerly in the west line of said Main street to the north line of said causeway, said north line being parallel with said south line thereof and four (4) rods distant therefrom; thence westerly in the line of land of Frank W. Richardson, Howard C. Gaines, Joseph Merriman, Richard J. Waterous, Charles B. Phelps, and highway about fifteen hundred and ninety-six (1,596) feet to the west line of a highway leading northerly; thence northerly in the west line of said highway along the easterly line of land sold to said bridge company by Patrick Garvan and Reuben A. Chapman, about five hundred and forty-one and a half (541 $\frac{1}{2}$) feet to corner of highway marked

with a stone; thence westerly and southwesterly in line of
11 said highway, being the Tolland turnpike, about fifteen hundred and seventy-four (1,574) feet to the intersection of said line with the northerly line of said causeway; thence westerly across said turnpike and in the southerly line of Thomas Williams' land, the same being the northerly line of said causeway, to said Williams' southwest corner; thence northerly in said Williams' westerly line, the same being the easterly line of land sold to the said Hartford Bridge Company by Ichabod L. Skinner, to the land of Giles Forbes; thence westerly in the southerly line of said Forbes' land and of land of Anthony Burnham, said line being the northerly line of land purchased by the said bridge company of said

Skinner, about seven hundred and seventy-five (775) feet to the northerly line of said causeway; thence westerly in the northerly line of said causeway along the land of Alexander Schmidt, Frank H. Pitkin, Lyman Risley, highway, lands of George W. Darlin and Jere. Riordan about eleven hundred and sixty-eight and one-half (1,168 $\frac{1}{2}$) feet to the southeasterly corner of land deeded to the said bridge company by Samuel Kellogg; thence northerly along the easterly line of said land deeded by said Kellogg about three hundred and eighty (380) feet to the said Connecticut river; thence southwesterly in the line of said river to the northerly line of the said bridge of the Hartford Bridge Company; thence westerly across said river in the northerly line of said bridge and drawbridge to the west bank of said river; thence northerly along the westerly bank of said river to a line running from Commerce street, as laid out, to said river, parallel to and forty-one (41) feet north from a line drawn along the southerly face of the toll-house belonging to the said bridge company; thence westerly in said line, so drawn, to the easterly line of Commerce street, as laid out; thence scuthery in the easterly line of said Commerce street, as laid out, eighty-two and three-tenths (82.3) feet to the place of beginning.

Said lay-out includes the covered bridge and other bridges, causeways, embankments, and lay-out of the Hartford Bridge Company

now used by it as and for a toll-bridge and causeways and
12 approaches appurtenant to and connected therewith; and in

addition thereto it includes as approaches, under the statute in this case provided, certain other real estate, contained within its bounds and description, belonging to the owner of said toll-bridge, to wit: to the Hartford Bridge Company, which real estate is used, and is by us found to be used, in connection with said bridge or for the maintenance or protection of said causeway and which, being so used, is by said statute declared to be and directed to be considered as approaches to and connected with said bridge.

And said lay-out also includes the toll-house belonging to said company and connected with said toll-bridge and declared by said statute to be a part of the toll-bridge with which it is connected.

And said commissioners estimated and assessed the damages caused by the lay-out and establishment of said free highway at two hundred and ten thousand (\$210,000) dollars in favor of the defendant, The Hartford Bridge Company.

That said commissioners found that the towns of Hartford, East Hartford, Glastonbury, South Windsor, and Manchester will be specially benefited by the lay-out and establishment of such free highway, and estimated and assessed said damages upon said several towns as benefits accruing to said several towns in such proportion as said commissioners found to be equitable, that is to say, as follows: To the town of Hartford ninety-five thousand (\$95,000) dollars, to the town of East Hartford sixty-six thousand (\$66,000) dollars, to the town of Glastonbury twenty-five thousand (\$25,000) dollars, to the town of South Windsor twelve thousand (\$12,000) dollars, to the town of Manchester twelve thousand (\$12,000) dollars.

This court accepts the report of the commissioners as on file, and

approves and confirms the lay-out of said highway and the estimate and assessment of damages caused by the lay-out and establishment of said free highway, and the estimate and assessment of said damages upon said several towns as made by said commissioners,

13 and thereupon and in pursuance of the provisions of said act and of the provisions of an act entitled "An act amending an act entitled An act to establish free public highways across the Connecticut river in Hartford county," passed by the General Assembly at its January session, 1889, and approved June —, 1889, it is ordered and adjudged:

That the town of Hartford shall within three months from the date of rendition of this judgment deposit with the treasurer of this State the sum of fifty-seven thousand (\$57,000) dollars, the sum being 60 per cent. of the sum so assessed against it.

And that the town of East Hartford shall within three months from the date of rendition of this judgment, deposit with the treasurer of this State the sum of thirty-nine thousand six hundred (\$39,600) dollars, the same being 60 per cent. of the sum so assessed against it.

And that the town of Glastonbury shall within three months from the date of rendition of this judgment, deposit with the treasurer of this State the sum of fifteen thousand (\$15,000) dollars, the same being 60 per cent. of the sum so assessed against it.

And that the town of South Windsor shall within three months from the date of rendition of this judgment, deposit with the treasurer of this State the sum of seven thousand two hundred (\$7,200) dollars, the same being 60 per cent. of the sum so assessed against it.

And that the town of Manchester shall within three months from the date of rendition of this judgment, deposit with the treasurer of this State the sum of seven thousand two hundred (\$7,200) dollars, the same being 60 per cent. of the sum so assessed against it.

And the court further orders and adjudges that at the expiration of said three months from the date of the rendition of this judgment the comptroller of the State shall draw his order on the treasurer in favor of the Hartford Bridge Company for the sum of

\$210,000, the same being the amount of the damages that
14 have been so assessed in its favor, and that the treasurer

shall hold the amount thereof, viz., said two hundred and ten thousand (\$210,000) dollars, for the benefit and subject to the order of said Hartford Bridge Company, and shall forthwith notify said Hartford Bridge Company that he so holds said amount, and thereupon as soon as the treasurer shall give said notice said highway so laid out as aforesaid shall become and remain a public highway.

The treasurer of the State shall at the same time give notice to the first selectmen of each of said towns, viz: Hartford, East Hartford, Glastonbury, South Windsor, and Manchester that said highway has become a free public highway to be thereafter maintained by said towns.

It is further ordered that if any of said towns shall fail to pay the judgment rendered against it as aforesaid, execution upon said

judgment shall issue against the towns so failing to pay, in favor of the State.

F. B. HALL, *Judge.*

I, George A. Conant, assistant clerk of the superior court within and for said county, hereby certify the foregoing to be a true copy of record.

In testimony whereof, I have hereunto set my hand and the seal of said court, this 27th day of June, A. D. 1895.

[SEAL.]

GEORGE A. CONANT,
Assistant Clerk.

Filed April 16, 1896.

GEORGE A. CONANT,
Assistant Clerk.

"EXHIBIT B."

(Annexed to motion for writ of mandamus.)

Being chapter CCCXLIII of the Special Acts of 1895 will be found on page 73 of this record, where it is annexed to the finding as Exhibit B.

15

"EXHIBIT C."

(Annexed to motion for mandamus.)

Vote of Commissioners of Connecticut River Bridge and Highway District Determining Proportions of the Several Towns.

At a meeting of the commissioners for the Connecticut River bridge and highway district duly and legally warned and held at 218 Main street, Hartford, Connecticut—present, Morgan G. Bulkeley, A. O. Crosby, Charles W. Roberts, John G. Root, Meigs H. Whaples, and Lewis Sperry—the following resolution was passed:

"Resolved, That whereas expenses amounting to the sum of five hundred dollars (\$500) have been incurred for the ordinary support and maintenance of the highway across the Connecticut river at Hartford and the causeway appurtenant thereto, this commission hereby determines under the provisions of chapter 343 of the Special Acts of 1895, the following sums as the proportions of said towns, viz:

The town of Hartford $\frac{7}{10}$, being the sum of \$395.00.

The town of East Hartford $\frac{1}{10}$, being the sum of \$60.00.

The town of Glastonbury $\frac{3}{10}$, being the sum of \$15.00.

The town of South Windsor $\frac{3}{10}$, being the sum of \$15.00.

The town of Manchester $\frac{3}{10}$, being the sum of \$15.00.

Passed and adopted September 14, 1895.

Attest:

MEIGS H. WHAPLES,
Secretary pro Tem.

Filed April 16, 1896.

GEORGE A. CONANT,
Assistant Clerk.

"EXHIBIT D."

(Annexed to motion for mandamus.)

Order of the Commissioners for the Connecticut River Bridge and Highway District to the Treasurer of the Town of Glastonbury.

At a meeting of the commissioners for the Connecticut River bridge and highway district duly and legally warned and held at 218 Main street, Hartford, Connecticut—present, Morgan G. Bulkeley, A. O. Crosby, Charles W. Roberts, John G. Root, Meigs H. Whaples, and Lewis Sperry—it is ordered:—

That whereas the commissioners for the Connecticut River bridge and highway district by resolution passed and adopted on the 14th day of September, 1895, as follows, to wit:

"Resolved, That whereas expenses amounting to the sum of five hundred dollars (\$500) have been incurred for the ordinary support and maintenance of the highway across the Connecticut river at Hartford and the causeway appurtenant thereto, this commission hereby determines under the provisions of chapter 343 of the Special Acts of 1895, the following sums as the proportions of said towns, viz:

The town of Hartford $\frac{7}{10}$, being the sum of \$395.00,

The town of East Hartford $\frac{1}{10}$, being the sum of \$60.00,

The town of Glastonbury $\frac{3}{10}$, being the sum of \$15.00,

The town of South Windsor $\frac{3}{10}$, being the sum of \$15.00,

The town of Manchester $\frac{3}{10}$, being the sum of \$15.00,
have determined the proportion required of the town of Glastonbury for the ordinary support and maintenance of the highway across the Connecticut river at Hartford and the causeway appurtenant thereto, to be the sum of fifteen dollars (\$15), the said town of Glastonbury by its treasurer is hereby required and ordered to pay to the said commissioners for the Connecticut River bridge and highway district or to treasurer thereof the said sum of fifteen dollars (\$15), upon the presentation of this order.

17 And it is further ordered:—

That Meigs H. Whaples, treasurer of the said the commissioners for the Connecticut River bridge and highway district, be and he is hereby directed and authorized to present this order to the treasurer of the town of Glastonbury, and upon payment thereof to give proper receipts therefor in the name of and in behalf of said commissioners.

Passed and adopted September 14, 1895.

Attest:

MEIGS H. WHAPLES,
Secretary pro Tem.

Payment of this order refused Sept. 21, 1895—as ordered by vote of the town of Glastonbury.

S. H. WILLIAMS, *Treas.*

Filed April 16, 1896.

GEORGE A. CONANT,
Assistant Clerk.

Defendant's Return.

ARTHUR F. EGGLESTON, State's Attorney for the County of Hartford,
vs.
S. H. WILLIAMS, Treasurer of the Town of Glastonbury.

To the honorable superior court now in session at Hartford, in and for the county of Hartford:

The defendant in the above-entitled case, in obedience to an order and rule of this court, made upon the application of Arthur F. Eggleston, attorney for the State of Connecticut, within and for Hartford county, to show cause why a writ of mandamus should not issue against him as treasurer of said town of Glastonbury, as prayed for in said application, appears in court, and for cause shows as follows:

1. Paragraphs 1, 3, 7, and 8 of said application are admitted.
2. Paragraphs 2 and 4 are denied.

3. So much of paragraph 5 as alleges that "said commissioners duly determined by resolution passed on the 14th day of September, 1895, a copy of which is annexed and made a part of this application marked 'Exhibit C,' the proportion of said expense to be paid by the town of Glastonbury to be the sum of fifteen (\$15.00) dollars" is admitted. The rest of said paragraph is denied, and this defendant says that a large portion of the expenses alleged in said paragraph to have been incurred by said commissioners, was incurred for the construction of a permanent bridge across said

Connecticut river as set forth in paragraph 24 of this return.

19 4. As to paragraph 6, this defendant admits that said commissioners made the order referred to in said paragraph and stated said proportion to be paid by said town of Glastonbury. The rest of said paragraph is denied.

5. By the terms of "An act concerning the Hartford bridge," being chapter 239 of the Public Acts of 1893, it is provided that the highways across the Connecticut river at Hartford—where the bridges, as laid out and established in accordance with the provisions of chapter 126 of the Public Acts of 1887, then were, together with said bridges and causeways, and approaches appurtenant to and connected therewith—should thereafter "be maintained by the State of Connecticut at its expense." It is also provided in said act, approved June 29, 1893, that three commissioners should be appointed by the governor, with the consent of the senate, who should constitute a board for the care, maintenance, and control of said highways and bridges, and that the "expense of repairing and maintaining said highways and bridges should be incurred by said board of commissioners on behalf of the State." In accordance with said act, George W. Fowler of Hartford, Charles W. Roberts of East Hartford, and John H. Hale of Glastonbury were duly appointed commissioners by the governor of the State, with the consent of the senate, to constitute a board for the care, maintenance, and control of

said highways and bridges. Said Fowler, Roberts, and Hale entered upon their duties as such commissioners on the fifteenth day of July, A. D. 1893, and for and on behalf of the State took the care, maintenance, and control of said highways and bridges. On the 31st day of January, A. D. 1894, said John H. Hale resigned his office of commissioner under said act, and thereafter said George W. Fowler and Charles W. Roberts continued to act as commissioners under said act, approved June 29, 1893, and continued to take the care, maintenance, and control of said highways and bridges for and on behalf of the State, and incurred large expenses in the repairs and maintenance of said highways and bridges, which 20 said expenses were incurred by said board of commissioners on behalf of the State of Connecticut, and were paid by said State.

6. The bridge across the Connecticut river between the towns of Hartford and East Hartford, which formed a part of said highway, having become out of repair, defective and unsafe for the public travel thereon, said commissioners on the thirteenth day of November, A. D. 1894, for and on behalf of the State, made a contract with the Berlin Iron Bridge Company—a corporation organized under the laws of the State of Connecticut, and having its office and place of business at Berlin, in said State—to construct a bridge across said river, between said towns of Hartford and East Hartford—where the bridge, as laid out and established in accordance with the provisions of chapter 126 of the Public Acts of 1887 then was—and on January 14, 1895, said contract was amended in writing between the said The Berlin Iron Bridge Company and said commissioners. A copy of said contract and amendment is hereto annexed, is made a part of this return, and is marked Defendant's "Exhibit I."

7. In accordance with said contract, said The Berlin Iron Bridge Company, on the fourteenth day of November, 1894, commenced the construction of said bridge, and on November 28, 1894, commenced the construction of a temporary bridge designed for the accommodation of public travel, while said bridge provided for by said contract was being built, and afterwards manufactured large quantities of material, furnished a large amount of labor at an expense amounting in the whole to above the sum of sixty thousand (\$60,000) dollars, which said expense the said board of commissioners incurred on behalf of the State of Connecticut, and in accordance with the provisions of said act.

8. On May 17, 1895, while the said The Berlin Iron Bridge Company was performing said contract and was constructing said temporary bridge, under said contract, the bridge which formerly existed between the towns of Hartford and East Hartford, and which the new bridge provided for by said contract was intended to take the place of, was totally destroyed by fire.

21 9. On May 18, 1895, said commissioners requested and required the said The Berlin Iron Bridge Company to make provision for the public travel across the Connecticut river under said contract of November 13, 1894, and amended January 14, 1895, which said requirement was in words and figures as follows:

To the Berlin Iron Bridge Company:

In view of the present emergency occasioned by the destruction of the Hartford bridge, you are hereby requested and required to make immediate provision for public travel across the Connecticut river, under your contract of November 13, 1894, amended January 14, 1895, by the erection of a temporary bridge as contemplated by said contract.

Hartford, Conn., May 18, 1895.

CHARLES W. ROBERTS,

GEORGE W. FOWLER,

*The Board of Commissioners for Hartford Bridge, Acting
for and in Behalf of the State of Connecticut.*

10. Afterwards said The Berlin Iron Bridge Company continued the construction of said temporary bridge, and also continued to perform the contract made with the State as aforesaid, for the construction of a bridge across said river until the passage and approval of the acts of the General Assembly as hereinafter set forth.

11. By the passage of an act entitled "An act concerning the Hartford bridge," being chapter 168 of the Public Acts of 1895, approved May 24, 1895, the General Assembly of the State undertook to repeal chapter 239 of the Public Acts of 1893 by authority of which said contract had been made with the Berlin Iron Bridge Company, and which was then being performed both by the State and said company. Said act also provided that, "from and after the passage of this act, the towns of Hartford, East Hartford, Glastonbury,

South Windsor, and Manchester, shall, except as hereinafter provided, maintain the highway across the Connecticut river, where the bridge formerly conducted by the Hartford Bridge Company as a toll-bridge now is, and across said bridge, and across and along the causeways and approaches appurtenant to and connected therewith." Said act also provided for a commission to consist of the Hon. Dwight Loomis of Hartford, and the comptroller and treasurer of the State, "to hear and determine all legal claims and demands, not to exceed forty thousand dollars (\$40,000), presented to them within six months from and after the passage of this act, arising under and by virtue of any contract made and executed by the commissioners appointed under chapter 239 of the Public Acts of 1895 with any party, particularly with the Berlin Iron Bridge Company, Connecticut." Said act also provided that "if any such party or parties, particularly the Berlin Iron Bridge Company, shall not be satisfied with the decision of said commission, permission and authority is hereby given to such party or parties, particularly the said The Berlin Iron Bridge Company, at any time within three years from and after the passage of this act, to commence and prosecute a suit or suits against the State of Connecticut, in the superior court for Hartford county, for any legal claim, debt, or demand arising under and by virtue of any valid contract made and executed by said commissioners, under and by the provisions of said public acts of 1893, acting within the legal scope of their authority with any party, and particularly with the

said The Berlin Iron Bridge Company, or for the construction of any contract with the said commissioners alleged by such plaintiff to be valid and binding upon the State of Connecticut, according to the ordinary procedure in civil actions in this State." It was also provided in said act that "if any contract for the building of a bridge over the Connecticut river between the towns of Hartford and East Hartford, alleged to have been made by said commissioners with the Berlin Iron Bridge Company, shall be declared valid and binding upon any complaint brought for its construction as hereinbefore provided, then the comptroller is authorized and directed to carry out and complete said contract according to the provisions thereof."

23 12. Said act of the General Assembly approved May 24, 1895, is in violation of the Constitution of the United States and of the 10th section of article one thereof, because it impairs the obligations of said contract existing between the State of Connecticut and the Berlin Iron Bridge Company, for the construction of a bridge across said Connecticut river, between the towns of Hartford and East Hartford, dated the 13th day of November, 1894, and amended January 14, 1895, and reaffirmed the 18th day of May, 1895.

13. Said order and requisition of said commissioners passed on the 14th day of September, 1895 (Plaintiff's Exhibit "D"), by the terms of which the said town of Glastonbury was ordered and required to pay by its treasurer to the said the commissioners of the Connecticut River bridge and highway district, or to their treasurer, the said sum of \$15.00, and all proceedings thereunder are in violation of the Constitution of the United States and of the 10th section of article one thereof, and void for the reasons alleged in paragraph 12.

14. Said act, approved May 24th, and said order and requisition of said commissioners, dated September 14, 1895, are in violation of the constitution of this State, and of sections 1 and 11 of the first article thereof, because said act denies to said towns and to the citizens thereof equal rights under the laws of the State, and because it takes the property of said towns and of the citizens thereof without just compensation therefor.

15. Said bridge across Connecticut river, between the towns of Hartford and East Hartford, and said highway across said bridge and across and along the causeway and approaches appurtenant to and connected therewith, are wholly outside of the territorial limits of said town of Glastonbury, and said act compels the town of Glastonbury and the defendant, as treasurer for said town, to

24 pay out of the funds and moneys of said town, the expense of building said bridges, highways, causeways, and approaches, and for the repair and maintenance of said bridges and highways, not being within its limits, and denies to the defendant and to said town of Glastonbury, of which he is treasurer, and to the citizens of said town, the equal protection of the laws, and especially of sections 2665, 2666, 2667, and 2768 of the General Statutes of this State; which is in violation of the Constitution of the United States, and particularly of article 14 of the amendments thereof, because

said act deprives said town and the citizens thereof, of their property without due process of law, and denies to said town and the citizens thereof, both being within the jurisdiction of the State of Connecticut, the equal protection of its laws.

16. By the terms of a special act entitled "Creating the Connecticut River bridge and highway district," passed by the General Assembly of this State, and approved June 28, 1895, it was provided among other things (section 1), "That the towns of Hartford, East Hartford, Glastonbury, Manchester, and South Windsor be, and they hereby are, created a body politic and corporate, with power to sue and be sued, under the name of the Connecticut River bridge and highway district, for the construction, reconstruction, care, and maintenance of a free public highway across the Connecticut river at Hartford, and the causeway and approaches appurtenant thereto, as described in a decree of the superior court of Hartford county, passed on the 10th day of June, 1889, in which decree said highway was laid out and established." It was also provided (section 2) in said act, that "Morgan G. Bulkeley, Meigs H. Whaples, John G. Root, and John H. Hall of Hartford; James W. Cheney of Manchester; Alembert O. Crosby of Glastonbury; John A. Stoughton of East Hartford; and Lewis Sperry of South Windsor, are hereby appointed commissioners for said district, with authority to maintain said free public highway, and whenever public safety or convenience may require it, erect new bridges along or upon said highway, to reconstruct, raise, and widen the causeway and
25 approaches appurtenant to, or a part of said highway, at the expense of the towns named in 'section 1' of this act, and composing said bridge district, at a cost not exceeding five hundred thousand (\$500,000) dollars." It was also provided in section 7 of said act, that "said commissioners are empowered to make any and all orders, and to do all things necessary for the construction, reconstruction, and improvement of said highway and the causeway and approaches appurtenant thereto, including all bridges necessary for the safety and convenience of public travel." It is also provided in section 9 of said act, that—

"The commissioners appointed under chapter 239 of the Public Acts of 1893 are hereby authorized and directed to turn over to the board of commissioners herein appointed, immediately on the organization of said board, all the property of every name and nature in their hands or under their control under the act of 1893, herein-after referred to, including all books, papers, and contracts."

Said special act is made a part of the application in this case, and is designated in said application as "Exhibit B."

17. The said special act approved June 28, 1895, and said public act approved May 24, 1895, constitute the only authority for the demand and requisition made on said town of Glastonbury, and on this defendant, as treasurer of said town, by said commissioners of the Connecticut River bridge and highway district, being the relators in this application, dated September 14, 1895, and made "Exhibit D" in said application. And said acts also constitute the only authority for all of the acts of said commission in relation to

said the Connecticut River bridge and highway district as set forth in said application.

18. Said special act, approved June 28, 1895, is in violation of the Constitution of the United States and of the tenth section of article one thereof, because it impairs the obligations of the said contract existing between the State of Connecticut and the Berlin

Iron Bridge Company for the construction of a bridge across
26 the Connecticut river between the towns of Hartford and
East Hartford, and dated the 13th day of November, 1894,
and amended January 14, 1895, and reaffirmed the 18th day of
May, 1895.

19. Said special act is in violation of the constitution of the State of Connecticut, and of sections 1 and 11 of the first article thereof, for the same reasons as alleged in paragraphs 14 and 21 of this return.

20. It is not the duty of said town of Glastonbury, nor is said town obliged by law to maintain the highway across the Connecticut river, as set forth in said act, or across or along the causeway or approaches appurtenant thereto, or to erect or build any bridge or bridges along or upon said highway or approaches connected therewith, or at any time or in any way to maintain or keep in repair said highway, or any of said bridges, causeways, or approaches as therein named.

21. Said town of Glastonbury is obliged by the statute laws of this State, to pay one-half of the expense of maintaining a ferry and highway across said Connecticut river, between said town and the town of Rocky Hill, and this defendant says that said bridge and highway across Connecticut river between the towns of Hartford and East Hartford, and the causeways and approaches appurtenant to and connected therewith, are wholly outside of the territorial limits of said town of Glastonbury, and said special act compels the defendant as treasurer for said town to pay out of the funds and moneys of said town the expense of building said bridges, highways, causeways, and approaches, and for the repairs and maintenance of said bridges and highways, not being within its limits, and denies to the defendant and to said town of Glastonbury, of which he is treasurer, and to the citizens of said town, the equal protection of the laws, and especially of sections 2665, 2666, 2667, and 2768 of the General Statutes of this State; which is in violation of the Constitution of the United States, and article 14 of the amendments thereof, for the same reasons as alleged in paragraph 15.

22. Section 1 of said special act, approved June 28, 1895,
27 provides that the towns of Hartford, East Hartford, Glaston-
bury, Manchester, and South Windsor shall be and they
hereby are created a body politic and corporate with power to sue
and be sued, under the name of the Connecticut River bridge and
highway district, for the construction, reconstruction, care, and
maintenance of a free public highway across the Connecticut river
at Hartford and the causeway and approaches appertaining thereto;
and this defendant says that no general power to sue and be sued
is conferred upon said board of commissioners by the provisions of

said act, and this defendant further says that no power is given by said act to said commissioners to institute suits in their own names, and that this proceeding is not properly brought in the names of said commissioners against this defendant.

And the defendant further says that this proceeding by mandamus is not properly brought against this defendant alone, without joining the respective treasurers of all the other towns of said district, and also the towns composing said highway district and body politic and corporate.

23. Said special act also provides (section four) that "for the purpose of providing means for the construction of a new bridge or bridges along said highway, or for the permanent improvement of said causeway or approaches by widening or raising the same; said board of commissioners is hereby authorized to issue the bonds of said district to an amount not exceeding five hundred thousand dollars, to run for not exceeding fifty years, and bearing a rate of interest to be determined by said commissioners, payable semi-annually, provided that not less than ten thousand dollars of said bonds shall be made due and payable each and every year from the date of issue." And said act further provided that for the payment of said bonds as they mature, and interest upon the same, the several towns named in the first section of this act shall annually pay over to the treasurer of said bridge commission on his written order, a sum equal to twenty-five cents on each one thousand dollars of the grand list of each town, until the proportionate

28 cost to each of said towns, as thereafter provided, has been fully paid. Said section attempts to compel said towns to pay a debt which they have not contracted, and takes the property of said towns and of the citizens thereof to pay for the expense of constructing said new bridge or bridges along said highway and for the repair and permanent improvement of said highway and causeway by widening or raising the same, against their consent, and is in violation of the Constitution of the United States, and particularly of the 14th article of the amendments thereof, for the same reasons as alleged in paragraph 15 of this return.

24. The greater part of the expense incurred by said commissioners, the relators in the present application, and for the payment of a proportion of which said demand and requisition was made on said town of Glastonbury, and on this defendant, as treasurer of said town, September 14, 1895, was incurred by said commissioners in connection with, and in preparation for, the construction of a permanent bridge across said river at the point described in said contract, dated November 13, 1894, made by the State through its commissioners under the act approved June 29, 1893, with the said The Berlin Iron Bridge Company. Said The Berlin Iron Bridge Company, in accordance with the provisions of "section three" of said public act approved May 24, 1895, has within six months after the passage of said act presented certain legal claims and demands to the commission provided for by said section three of the public act, approved May 24, 1895, and arising under and by virtue of said contract, which said claim and demand is now pending before said

commission, and no decision has been rendered thereon. And said The Berlin Iron Bridge Company has not yet brought suit in the superior court for the county of Hartford, for any legal claim, debt, or demand arising under and by virtue of said contract, or of any valid contract made and executed by said commissioners, under and by the provisions of said public act of 1893, acting within the legal scope of their authority with any party, and particularly

wit-th~~e~~ said The Berlin Iron Bridge Company, nor has the
 29 said The Berlin Iron Bridge Company yet brought suit for
 the construction of said contract, or of any contract with said
 commissioners, alleged by such plaintiff to be valid and binding
 upon the State of Connecticut, or to determine the validity of said
 contract; nor has the term of three years, within which such suit
 or suits may be brought by the said The Berlin Iron Bridge Com-
 pany, for the construction of said contract, or of any contracts with
 said commissioners, alleged by such plaintiff to be valid and bind-
 ing upon the State of Connecticut, as provided in "section four" of
 said act, yet expired. If said commissioners have any power under
 said act, they have no power to require and order said town of
 Glastonbury, or this defendant as treasurer of said town, to pay any
 of the expense or cost of said bridge across Connecticut river be-
 tween the towns of Hartford and East Hartford, until the expira-
 tion of said term of three years, or until a construction of said con-
 tract has been obtained in a suit brought under the provisions of
 said act.

Wherefore for each and all of the causes and reasons in this his return set forth, the defendant insists that said writ of peremptory mandamus shall not issue, as prayed for in said application, and he prays the judgment of the court thereon, and that he may be hence dismissed.

Dated at Hartford this 25th day of November, A. D. 1895.

S. H. WILLIAMS,
Treas. of the Town of Glastonbury.

STATE OF CONNECTICUT, }
 Hartford County. }

HARTFORD, CONN., Nov. 25, 1895.

Then personally appeared S. H. Williams, treasurer of the town of Glastonbury, and made oath that the foregoing return by him subscribed is true to the best of his knowledge and belief.

Before me,

JOHN H. BUCK,
Commissioner of the Superior Court.

Filed Nov. 25, 1895.

(Annexed to defendant's return)

being the vote of commissioners for Connecticut River bridge and highway district determining proportions of the several towns, will be found on page 15 of this record, where it is annexed to the motion for writ of mandamus.

EXHIBIT "I."

(Annexed to defendant's return.)

Contract of the State of Connecticut with the Berlin Iron Bridge Company for the Construction of a Bridge.

This agreement, made this 13th day of November, A. D. 1894, by and between George W. Fowler of Hartford and Charles W. Roberts of East Hartford, the board of commissioners for Hartford bridge, acting for and in behalf of the State of Connecticut, party of the first part, and The Berlin Iron Bridge Company, a corporation duly organized under the laws of the State of Connecticut, and located in the town of Berlin, in said State, party of the second part, witnesseth:

The party of the second part, in consideration of the payments to be made to it as hereinafter provided, hereby promises and agrees to construct and erect a highway drawbridge across the Connecticut river between the towns of Hartford and East Hartford, upon the site now occupied by the Hartford bridge, so called; to erect the abutments and piers for said bridge; to make such provision for public travel during the progress and until the completion of said work that said travel shall not be interrupted or seriously impeded; to furnish and provide all materials and labor for said work; to commence said work forthwith, and to have the same completed on or before July 1, 1895; to do said work in strict accordance with the plan and specifications hereto attached, and made part of this contract.

31 The party of the first part, in consideration of the performance by the party of the second part of its promises and agreements hereinbefore contained, hereby promises and agrees to pay the party of the second part the sum of two hundred and seventy-four thousand nine hundred dollars (\$274,900), as follows, to wit: At the end of each calendar month the engineer of the party of the first part shall estimate the proportionate cost of work done and material delivered during such month, basing such estimate upon the attached schedule of cost, and shall return certificate of such estimate to the party of the first part and to the party of the second part. Ninety per cent. of such estimate shall be paid on the tenth day of the month next following, and the balance of said contract price when the entire work is completed and accepted by the party of the first part.

Schedule of Cost.

Completion of temporary bridge.....	\$18,000
Removal of old bridge and piers.....	9,000
Completion of west abutment.....	16,000
Completion of each pier.....	11,000
Completion of east abutment.....	20,000
Delivery of iron-work for 106-ft. span and lift-span.....	16,000
Delivery of iron-work for each other span.....	16,000
Completion of each span.....	8,000

Executed in duplicate the day and year first above written.

GEORGE W. FOWLER,
CHARLES W. ROBERTS,

*The Board of Commissioners for Hartford Bridge,
Acting for and in Behalf of the State of Connecticut.*
THE BERLIN IRON BRIDGE
COMPANY,
By GEORGE H. SAGE, Secretary.

Witnesses:

ARTHUR P. MOORE.
HUGH M. ALCORN.

- 32 *Specifications for Steel Highway Bridge Over the Connecticut River Between Hartford and East Hartford, Connecticut, 1894.*

General description of superstructure.

The superstructure will consist of five (5) fixed spans, each 158' 4" center to center of end pins, one fixed span 106' 6" center to center of end pins, and one lift-span 36' 6" long; the roadway 30' in the clear, one walk on upstream side of bridge 10' in the clear. On downstream side of roadway, outside of truss, provision shall be made for electric cars. Distance from railing to iron-work on bridge to be at least 12' in the clear. The six (6) fixed spans will consist of Pratt trusses, with floor for roadway and sidewalk of I beams and buckle plates covered with concrete and asphalt, in accordance with the plans approved by the bridge commissioners or their engineer. The lift-span will consist of plate girders, with floor of I beams, on which 4" Georgia pine timber containing 12 lbs. creosote oil per cubic foot shall be placed for the roadway and sidewalk; on top of which creosoted plank shall be placed $\frac{1}{2}$ T. & G. pine sheathing, on which sheathing shall be placed asphalt wearing surface, as shown by plan.

Throughout the entire length of the bridge on the electric railroad, supports of superstructure shall be left ready for the ties and rails, which ties and rails shall not be included in the proposal.

An ornamental railing, of design approved by the bridge commissioners, shall be placed on the outside of the electric railroad track; also on the outside of walk, as shown by plans.

Whenever in the drawings one-half of a truss or member is shown, the other half is to be built in an identical manner (providing for right and left connections, if necessary) with the part shown.

- 33 Whenever several members or parts of the same kind and same relative position in the bridge, and having the same or similar duties to perform, are shown, the dimensions of all of these members or parts shall be the same, unless otherwise marked or specified.

Details of Construction and Workmanship.

All workmanship shall be first-class in every particular. Abutting joints in top chords shall be in exact contact throughout, and fully spliced.

Eye-bars belonging to the same member must be bored with such exactness that on being piled on each other the pins shall pass through the holes at both ends without driving.

All metal work shall be laid from templets, which shall be accurately made in accordance with the plans.

The contractor is to make all calculations of slant lengths, ordinates, camber, etc., which may be necessary in laying out the work.

All parts and members must be thoroughly straightened or curved as required, and free from twists, kinks, and buckles.

All component parts of built members must be riveted together in close contact.

All web plates are to be neatly sheared to the true lines and curves, so that they shall not project beyond the flange angles of the girders, and shall not fall short of the backs of these angles by more than $\frac{1}{8}$ ".

All plates not over 32" wide are to be universal mill plates, with both of the long edges rolled full and true to line and width.

All curved and bent members shall be worked to the true curves and angles upon proper formers, and by methods and appliances which will give the required results with the least amount of local initial stress upon the material.

Each of the separate members and parts of the metal work shall be clearly and distinctly marked before leaving the shops
34 with a distinguishing letter, number, or combination of letters and figures; and the same marks shall be placed upon a set of blue prints of the drawings, which is to be used to locate the metal during the erection of the work.

Riveted work.—Machine-driven rivets are to be of extra soft steel, or double-refined iron. Field or hand-driven rivets are to be of double-refined iron.

Rivets are to be machine driven wherever practicable.

The diameter of the punch used for rivet holes is not to be more than $\frac{1}{6}$ " larger than the specified diameter of the rivet, and the diameter of the die shall not be more than $\frac{1}{8}$ " larger than that of the punch.

Rivet holes must fit accurately over one another, so as to allow the easy passage of the rivet without the violent use of the drift-pin, and without enlargement by means of a cold chisel, or any other tool except fluted reamers.

Rivets shall preferably have heads of full hemispherical shape, whose diameter shall not be less than $1\frac{1}{4}$ " for $\frac{3}{8}$ " rivets, and $1\frac{1}{8}$ " for $\frac{5}{8}$ " rivets.

If another form of head is used, it shall contain as much material as in the heads above specified; and the shape of the head must

be uniform throughout, as well as the size for the same diameter of rivet.

Rivets shall be carefully heated to a uniform heat, and driven before cooling. They are to be upset straight so as to entirely fill the holes, thoroughly and neatly cupped with heads concentric with the body of the rivet.

All loose and imperfect rivets are to be cut out and replaced by tight and sound ones.

Rivet heads are to be countersunk when so shown, or whenever necessary, to avoid interfering with other members.

In all cases the diameter of rivet marked on the plans shall be understood to mean the diameter of the rivet before driving.

Cast-iron bearings on the pier and abutment shall be planed to true contact surfaces. Other bearings shall be smooth, true and out of wind.

35 Steel shall not be worked at a heat between the ordinary temperature of the air and a full red heat.

All steel which is bent hot shall be properly annealed after bending.

In any portion of the finished work, when troughs or channels occur which are capable of holding water, these spaces shall be filled with asphalt, putty, or other elastic and waterproof material.

Approval of Drawings.

Copies of all shop plants must be submitted to the engineer of the bridge commissioners, and no material ordered or work done until these plans are approved by said engineer.

Quality of Material

Steel.—All steel used in the bridge must be of uniform quality, and furnished by manufacturers of established reputation.

All steel shall be manufactured by the acid or basic open-hearth processes.

Acid open-hearth steel must not contain more than .08 per cent. of phosphorus, and basic steel not more than .06 per cent. of phosphorus.

No steel used for members which are bent hot shall contain more than .03 per cent. of sulphur.

All plates and other shapes, or sections rolled of steel shall be of full and true size and thickness, straight, and of smooth finish, and free from buckles, flaws, cracks, checked edges, or other imperfections.

All steel (except rivet steel) must have an ultimate tensile strength of not less than 56,000 lbs. per square inch, nor more than 64,000 lbs. per square inch, and an elastic limit of not less than 33,000 lbs. per square inch.

All steel must show an elongation before rupture of not less than 25 per cent., a reduction of area at the point of fracture of 45 per

36 cent., and must bend cold 180 degrees to a curve, the diameter of which is equal to the thickness of the piece tested, without sign of fracture on the outside of the bent portion; and, if used for any members which are bent hot to an angle or curve, it must stand the bending test specified, after having been raised to a red heat, and while red hot plunged into cold water.

Punched holes shall bear enlargement by means of the drift-pin to $1\frac{1}{2}$ times their original diameter, as hereinafter more fully specified.

In addition to the above requirements all steel shall bear the ordinary processes of straightening, hot and cold bending, shearing, punching, drifting, etc., necessary in the manufacture. If these processes are performed in a proper manner and with suitable tools a failure to withstand the ordinary treatment in manufacture or erection, or the development of flaws or cracks thereunder, shall be a sufficient cause for the rejection of the pieces affected and a retest of the other pieces from the same melt or blow.

Rivet steel shall be extra soft, having a tensile strength of not less than 50,000 lbs. per square inch, nor more than 55,000 lbs. per square inch, and must bear bending hot or cold until the sides of the bent rivet are in close contact throughout, without sign of fracture on the outside of curve.

Rivet iron shall be double refined, with the same qualifications in regard to tensile strength and bending as for rivet steel.

Cast iron.—All cast iron shall be tough, gray iron, having a tensile strength of 16,000 lbs. per square inch. A hammer blow upon an edge or corner of a casting of this metal shall indent the edge without causing the metal to flake off.

All castings are to be made in fine sand moulds, giving a smooth finish, with all angles clear cut and sharp; and the castings must be free from cold shuts and large or injurious blow-holes.

Castings shall be cleaned from adhering sand before painting, and all gates, fins, or other accidental projections chipped down to a flush surface.

Lumber.—All lumber and timber is to be straight-grained, 37 free from large or loose knots, wane edges, through or round shakes, large or through season cracks, decay, mould, worm-holes, or any defects impairing its strength or durability.

Wherever "hard pine" is shown or specified, it shall be understood to mean Georgia "hard pine" of the quality known in the lumber trade as "prime," and is to conform to the classification and specification for yellow-pine lumber adopted by the Southern Lumber and Timber Association. All lumber is to be sawed straight, and of full and even width and thickness.

Asphalt.—All asphalt must be the best quality of Trinidad asphalt.

Concrete.—The concrete in superstructure shall be of the same quality as specified in the substructure.

Inspection and Tests.

The contractor is to furnish all proper and customary facilities for the inspection of the materials used for and work done upon the bridge, from and in the rolling mills to the final completion of the bridge at the site.

He must furnish and prepare the specimens required for testing, and furnish and operate a testing machine of not less than 50,000 lbs. capacity for the tests, without extra charge.

Duplicate copies of all stock and order lists shall be transmitted to the bridge commissioners or their duly authorized agent when the stock is ordered.

Except for minor parts and with the permission of the bridge commissioners or their duly authorized agent, all the steel used in the bridge shall be rolled especially for this work, and subject to inspection; and the bridge commissioners or their duly authorized agent shall be duly informed of the names of the manufacturers, together with the time and place of rolling.

All requirements of ultimate strength, elasticity, and ductility herein specified, must be established by at least three tests 38 for each separate melt of steel; and the test-pieces shall be so selected from the finished material that each furnace heat shall be represented by at least one test.

All of the above tests shall be made upon standard test-pieces, cut from the shapes and sections of finished material actually used.

The test-pieces shall be of the full thickness of the piece from which they are cut, with two of the sides in the condition in which they came from the rolls, the other two sides to be planed parallel for a distance not less than twelve times the diameter of the piece, and all test-pieces to be at least one-half square inch in sectional area. The stretch to be measured in a length of not less than 8".

Drifting tests may be required from each heat of steel rolled into finished plates or shapes as follows: The test-pieces are to be 4" long and 3 $\frac{1}{2}$ " wide except when cut from sections less than 3 $\frac{1}{2}$ " in width, in which case they are to be the full width of the piece.

The end edges of the pieces are to be sheared, the side edges may be rolled or planed, and the flat sides are to be in the same condition in which they left the rolls.

In the center of each test-piece a hole is to be punched $1\frac{3}{8}$ " in diameter and without reaming, and these holes must bear enlargement by means of a drift-pin when the metal is cold, to $1\frac{1}{4}$ " in diameter, without causing a crack to appear either in the periphery of the hole or in the edges of the test-piece.

All blooms, billets, or slabs, shall be thoroughly inspected for flaws, blow-holes, or other defects, before being rolled into the finished sections; and all defective or imperfect portions must be trimmed off, so that they shall not impair the quality of the finished product.

Each piece of finished steel, or each bundle of small pieces, shall be conspicuously stamped or marked with a number identifying the

melt or blow, and proper means of identification of the original melt or blow number shall be used throughout all processes of the manufacture.

All chemical analyses made by the manufacture upon material used in the bridge shall be forwarded to the bridge commissioners or their duly authorized agent, before the shipment of material from the mill.

Painting.

All scale and rust is to be thoroughly removed from the surfaces of the metal before assembling.

All surfaces of the metal work which are to be riveted together, in close contact, shall have one coat of paint before assembling.

All surfaces of the metal work, not in absolute contact, but which cannot be easily painted after riveting up or erecting, are to have two coats of paint before assembling.

All machine-finished surfaces are to be protected by a coat of white lead and tallow.

All other surfaces of the metal are to have one coat of the best boiled linseed oil, before shipment.

After erection, all dirt, dust, and cinders shall be thoroughly removed from the metal work, and the whole surface including the interior portions of chords, compression members, and joints, wherever accessible, is to receive two coats of paint, the first coat to be allowed sufficient time to thoroughly dry and harden before applying the second.

All oil must be of the best quality of pure linseed oil.

All paint used is to be thoroughly and evenly applied, and well worked into all crevices, so as to reach and cover all portions of the metal work which are exposed to the air; and no metal is to be painted when wet or covered with frost, snow, or ice.

Erection.

The contractor is to furnish all materials and labor for erecting and is to erect the bridge in place. The false work employed must be of a suitable character and strength.

The contractor is to remove all waste materials and all rubbish produced by his work, and leave the bridge and its approaches in a neat condition, when completed.

For masonry.

The masonry is to be constructed strictly in accordance with the plans approved by the engineer of the bridge commissioners. All masonry shall be first class except the footing courses, the backing of the abutments, and the core of the piers.

All face stone masonry will be good, sound, and clear granite

with no cracks, bad seams, or discolorations. All stone will be laid with the stratification (grain) horizontal. Footing stone and backing will be sound stone and laid in their natural beds.

Bridge seat courses will be quarry-faced, point-dressed on beds, pene-hammered on top, with no slack places.

Bearing stone will be bush-hammered on top.

Parapet coping will be cut for a cornice, point-dressed on top, leaving no slack spots. They will be pitched to a width on top, joints not to exceed $\frac{1}{4}$ ", and be grouted. All parapet coping will have good and full beds. Quarry-faced stone must be clean split with no projections to exceed $1\frac{1}{2}$ " outside of line of drift-lines, with no deep valleys, and must not show holes drilled for splitting. First-class masonry will consist of—

1st. Stones cut to dimensions, laid in horizontal courses, alternating headers, and stretchers laid in cement mortar; at least one-quarter of the wall shall consist of headers.

2d. All stone will be quarry-faced. All beds will be roughly dressed for their entire surface. Horizontal joints will not exceed $\frac{1}{2}$ " for 16" back from face. Vertical joints will not exceed $\frac{1}{2}$ " for 10" back from the face.

3d. Headers will be at least 5' long, where the thickness of the wall will admit of that length, shall not have more rise than bed, nor less than $1\frac{1}{2}$ ' width of bed and shall be placed only over a stretcher.

4th. Stretchers will not be less than 20" in width, or more than 8' long, and have at least $\frac{1}{4}$ more bed than rise. Courses shall be not less than 16" nor more — 30" in height. Joints shall be broken at least 12". No course shall have more height than any course underneath. All corners will be run with a $1\frac{1}{2}$ " chisel draft.

Backing shall have good beds and builds, joints and bonds, and be of stone of large size. All joints shall be completely filled with mortar, and, if required, the whole shall be thoroughly grouted. In coursed work the backing will be leveled up with each course.

Footing stone shall be large stone laid as headers, no stone less than 14" thick to be used, 80 per cent. of them shall have at least 12 square feet area. All voids and spaces shall be thoroughly filled with cement mortar and spawls.

Mortar.

Mortar used for all work shall be composed of one part of the best Rosendale cement and two parts of sand by measure.

The sand shall be sharp and clean, free from clay and loam, and not too fine.

The water must be clean and potable.

The cement shall be of first quality Rosendale cement. It shall be furnished in quantities to allow of a thorough test being made. It shall stand a test, after mixing, and being allowed to stand in the air one-half hour, and in water twenty-three and one-half hours, of 70 lbs. per square inch tensile strain, and ground to a fineness that 92 per cent. shall pass through a No. 50 sieve.

Wherever concrete may be called for, it shall be composed of one part mortar, as above specified, and two parts of broken stone.

All new masonry shall be built upon the old foundations now in place and supporting piers under the present bridge.

All outside joints will be raked out to a depth of one inch, and neatly pointed.

The pointing mortar will be mixed one part of sand to one part of Taylor's Portland cement.

Before the footing courses for new piers shall be laid, such 42 portions of the crib-work as may be determined by the bridge commissioners shall be removed and substituted by new material in either timber, concrete, or masonry as may be agreed upon.

All material in old masonry not used in backing in new work shall be used for riprap in the masonry.

Masonry may be laid in freezing weather by using salt water for mixing the mortar.

Dissolve one pound of rock salt in eighteen gallons of water when the temperature is at thirty-two degrees Fahrenheit, and add one ounce of salt for every degree lower in temperature, or enough salt, whatever the temperature may be, to prevent the mortar freezing, and the sand and cement to be warmed before being mixed with water.

No masonry laid in freezing weather to be pointed until spring.

Piles.

Where, in the opinion of the bridge commissioners, or their duly authorized agent, piles are required, they shall be sound, straight, and not less than 6" in diameter at the small end, measured inside the bark. The bark to be removed if necessary. They will be driven to hard bottom in such places and positions as the engineer may direct, and sawed off level at the proper height. All to be properly banded to prevent splitting while being driven, and, when necessary, ends to be shod with wrought or cast iron shoes.

Temporary Bridge.

Before the commencing the tearing away of the present bridge, the contractor must erect, and during his work maintain, a temporary bridge on either the upstream or downstream side of the present structure; said temporary bridge is to have a roadway 16' feet wide in the clear, and one footwalk 5' wide in the clear. The contractor will be required to provide suitable protection between the roadway and sidewalk, and also on the outside of walk.

43 All parts of the present wooden covered bridge—both sub-structure and superstructure—to become the property of the contractor when the temporary bridge is ready for travel.

No work shall be commenced upon any part of the temporary bridge or new structure until detailed plans have been made by the contractor and approved by the bridge commissioners or their duly authorized agent.

All parts of the work to be constructed shall at all times be subject to the inspection of the bridge commissioners, or their duly authorized agents.

The methods of construction of the several parts, dimensions, sections, and details will be fully illustrated and set forth by and upon accompanying plans.

General Requirements and Agreements.

The commissioners shall have the right to order any alterations, additions, or diminutions in the work as it progresses, or to reject any materials or work that may appear to them to be imperfect or damaged, at any time before the final acceptance of the bridge, and to cause the substitution of new and good materials and work therefor; and the contract shall not be vitiated by such acts, but a fair compensation shall be allowed the contractor for extra work due to changes or additions, and a fair deduction will be made for any reduction or diminution of the amount of the materials or work ordered.

All of the work to be done under this contract must be executed by competent and skillful men in its several portions, respectively; and the contractor shall employ a skillful and experienced superintendent or foreman, whose duty shall be to be present upon the work during working hours, to direct the work and the men employed thereon.

The bridge commissioners, or their duly authorized agent, shall have the right to give directions concerning details of the work to the contractor or to any subcontractor, superintendent, foreman or

other person who may appear to the bridge commissioners,
44 or their duly authorized agent, to be in charge of any portion

of the work when the principal contractor is not present, and to order the discharge of any person employed on the work by the contractor, who appears to be incompetent or to act in a disorderly or improper manner; and it is hereby agreed that the above directions and orders of the bridge commissioners or their duly authorized agent shall be promptly followed and executed by the contractor, his agents and employés.

It is hereby specified and agreed that the inspection of the work by any agent of the commissioners during the process of construction shall not relieve the contractor from the full responsibility of doing all portions of the work in a thorough and workmanlike manner; and the contractor hereby warrants all the materials furnished, and work done, to be in accordance with the terms of the specifications forming a part of the contract.

The contractor hereby agrees to repair and make good at his own expense any portion of the work that may have been or become injured or destroyed, before the final completion and acceptance of the bridge, by any accident, or by negligence on the part of any of his employés.

The contractor shall assume all risks of accidents to persons or

property prior to the acceptance of the finished structure by the bridge commissioners or their authorized agent.

The commissioners hereby agree to allow the contractor a sufficient time, beyond the dates named in this contract, for the completion of the work, to make good all work destroyed or damaged by causes beyond his control.

It is hereby agreed that, if at any time before the completion and acceptance of the work the commissioners shall consider the progress of the work to be unnecessarily delayed, or that all the requirements or provisions of this contract have not been fulfilled, or that any part of the work is not properly executed by the contractor in accordance with the terms of the said contract, the said commissioners shall have the power to notify the said contractor to discontinue all work or any part thereof under this contract, and to designate the part of the work to be discontinued, and the date when the contractor shall cease to carry on the work or part thereof. Upon the receipt of a notification from the commissioners to discontinue the work or any part thereof, the contractor shall thereupon cease to continue the work upon the part or parts designated in the said notification at such time as shall be therein stated, or, if the time shall not be stated, as soon after the receipt of the notification as shall be possible, with due regard to the safety of the part of the work which may have been already commenced and partially completed; and the commissioners shall thereupon have the power, at their discretion, to carry on and complete the remainder of the work in the manner, by contract to another party or by labor hired by the day, that they may deem advisable, and to use such materials as may be found at or in the vicinity of the bridge, or to provide other materials of the kinds and quantities necessary to complete the work in accordance with the terms of this contract; and the cost and expenses of carrying on the work, in the manner designated in this clause, shall be deducted from the balance or amount of money due to the contractor under this contract at the time when he ceased to continue the work. Or, if the said cost and expenses should exceed the said balance, the said contractor is to be held liable to and is to pay the said State of Connecticut the excess or difference between the cost of carrying on the work as above indicated and the said balance due under this contract; but the said excess or difference to be paid by the contractor shall not exceed the amount of the bond given by him for the faithful performance of the contract.

The contractor hereby agrees to give the necessary and proper attention to and supervision of the execution of this contract, either personally or by duly qualified and competent agents. Also, that

he will not sublet any portion of the said work, excepting to
46 parties approved by the bridge commissioners or their duly authorized agent, and who shall agree to conform to and be governed by the terms of this contract.

Moreover, that he will not assign, by power of attorney or otherwise, any portion of the said work, or any of the payments therefor, unless by and with the previous consent of the commissioners.

The contractor further agrees to complete the entire work upon and connected with the bridge as specified herein on or before July 1, 1895.

GEORGE W. FOWLER,
CHARLES W. ROBERTS,
*The Board of Commissioners for Hartford Bridge,
Acting for and in Behalf of the State of Connecticut.*
THE BERLIN IRON BRIDGE COMPANY,
By GEORGE W. SAGE, Secretary.

Witness:-

ARTHUR P. MOORE.
HUGH M. ALCORN.

To the Berlin Iron Bridge Company:

In accordance with the provisions of the contract entered into between you, party of the second part, and the undersigned, the board of commissioners for Hartford bridge, acting for and in behalf of the State of Connecticut, party of the first part, dated November 13, 1894, in relation to alterations, additions, or diminutions in the materials and work thereby contracted for,

You are hereby ordered to substitute in lieu of the plans and specifications for the west abutment and the first, second, and third piers, counting from the west end of the bridge, also in lieu of the plans and specifications for the lift-span, so called, of the bridge, and the first and second spans next east thereof, the accompanying plans and specifications for the west abutment, turn-table pier and first pier east thereof, and for swing-draw span of said bridge, and to furnish materials and perform requisite work upon the
47 above-specified portion of said bridge in accordance with the substituted plans and specifications. And in further accordance with the contract, said party of the first part agrees to pay to said party of the second part over and above the payment required by said contract the sum of fifty-one thousand dollars (\$51,000), payments to be made as provided in said contract, except that the schedule of cost shall be and the same is amended and changed to conform to the changes hereby ordered, and, as amended and changed, shall read as follows, viz:

"Schedule of Cost."

Completion of temporary bridge.....	\$18,000
Removal of old bridge and piers.....	9,000
Completion of west abutment.....	20,000
Completion of turn-table pier.....	51,000
Completion of pier next east of turn-table pier.....	25,000
Completion of each other pier	11,000
Completion of east abutment.....	20,000
Delivery of wood and iron work for draw-span	40,000

Delivery of iron-work for each other span.....	15,000
Completion of draw-span.....	18,000
Completion of each span.....	8,000

Dated at Hartford, this 14th day of January, 1895.

GEORGE W. FOWLER,
CHAS. W. ROBERTS,

*The Board of Commissioners for Hartford Bridge,
Acting for and in Behalf of the State of Connecticut.
THE BERLIN IRON BRIDGE COMPANY,
By CHAS. M. JARVIS, President.*

In presence of—

WILLIAM S. CASE.
HUGH M. ALCORN.

48

HARTFORD, CONN., January 14, 1895.

The foregoing order is this day received and the additional payment therein provided for is assented to and accepted as a fair compensation for extra work due to changes and additions contained in said order.

THE BERLIN IRON BRIDGE CO.,
By CHAS. M. JARVIS, President.

In presence of—

WILLIAM S. CASE.
HUGH M. ALCORN.

Amended Specifications for Steel Highway Bridge Over the Connecticut River Between Hartford and East Hartford, Connecticut, 1895.

Superstructure.

The superstructure will consist, under the amended contract, of four fixed spans, each 158' 4" center to center of end pins, and one swing-span 303' 0" center to center of end pins. The original specifications shall apply to four fixed spans the same as before. The swing-span will be of panel length, width, etc., as shown on plans, and in general will be constructed in the same manner as the fixed spans. The floor of the swing-span, however, shall consist of 4" creosoted North Carolina pine, containing 12 lbs. of creosote oil per cubic foot. This shall be covered with $\frac{1}{2}$ " tongued and grooved pine sheathing, on which sheathing shall be placed asphalt wearing surface.

The roadway and sidewalk of the draw-span to be made in same manner.

49 The turn-table of the draw-span shall be the same as shown on plans, the number of wheels, size, etc., being there indicated.

The draw shall be arranged to work by hand, and shall be provided with proper levers for opening and closing same.

Substructure.

The original specifications for the piers under the fixed spans will not be changed, except that the footing courses for these piers shall be laid on such portion of the present crib-work of the old bridge as may be determined by the bridge commissioners. Such of this crib-work as may be necessary shall be removed, and new material substituted, either timber, concrete, or masonry, as may be agreed upon.

The draw-pier shall rest on a pile foundation thoroughly rip-rapped, and the outside ring shall be of first-class masonry, as noted in the original specifications. The interior or core of this pier may be filled with concrete, or with the same quality of masonry, as specified in the original specifications for backing.

In all other particulars the original specification is to apply to the new work called for under the amended contract the same as for the old work under the original contract.

GEORGE W. FOWLER,
CHAS. W. ROBERTS,
The Board of Commissioners for Hartford Bridge,
Acting for and in Behalf of the State of Connecticut.
THE BERLIN IRON BRIDGE COMPANY,
By CHAS. M. JARVIS, President.

In presence of—

WILLIAM S. CASE.
HUGH M. ALCORN.

50 To the Berlin Iron Bridge Company:

In view of the present emergency, occasioned by the destruction of the Hartford bridge, you are hereby requested and required to make immediate provision for public travel across the Connecticut river, under your contract of November 13, 1894, amended January 14, 1895, by the erection of a temporary bridge, as contemplated by said contract.

Hartford, Connecticut, May 18, 1895.

GEORGE W. FOWLER,
CHAS. W. ROBERTS,
The Board of Commissioners for Hartford Bridge,
Acting for and in Behalf of the State of Connecticut.

Filed April 16, 1896.

GEORGE A. CONANT,
Assistant Clerk.

51 Superior Court, Hartford County, Dec. 17, 1895.

ARTHUR F. EGGLESTON *ex rel.* }
vs.
S. H. WILLIAMS, Treasurer. }

Motion to Strike Out and Separate Defenses.

In the above-entitled action the plaintiff moves the court to strike out each and all the paragraphs in the defendant's return, because

First. The reasons assigned by the defendant as a defense to the plaintiff's application for a writ of mandamus are all contained and set forth under one defense and are so commingled and confounded with each other that it is impossible for the defendant to ascertain the nature or number of the defenses intended to be assigned by the defendant.

Second. The return of the defendant contains more than one defense and yet all the defenses are alleged and set forth under one defense or heading.

And the plaintiff further moves the court to order the defendant to identify, separate, and number his several defenses in order that the plaintiff may reply thereto.

PLAINTIFF,
By SPERRY, McLEAN & BRAINARD.

Filed December 17, 1895.

First motion was withdrawn at hearing. Second motion denied.
R. WHEELER, J.

January 13, 1896.

Superior Court, Hartford County, Jan. 27, 1896.

ARTHUR F. EGGLESTON *ex Rel.* }
vs.
S. H. WILLIAMS, Treasurer. }

Reply to Defendant's Return.

1. Paragraph 5 is admitted.
2. With regard to paragraph 6, the relators admit the execution of a certain writing purporting to be a contract between
52 the Berlin Iron Bridge Company and certain commissioners named in paragraph 5 of the return, which said pretended or alleged contract is referred to as "Exhibit I" in paragraph 6 of the return; the rest of said paragraph 6 is denied.

3. With regard to paragraph 7, it is admitted that the Berlin Iron Bridge Company constructed a temporary bridge; the rest of said paragraph is denied.

4. It is admitted that the bridge across the Connecticut river at Hartford was totally destroyed by fire on the 17th of May, 1895; the rest of paragraph 8 is denied.

5. Paragraph 9 is admitted except that the relators deny that the contract referred to as "said contract of November 13, 1894, and amended January 14, 1895," was a valid contract or in any way binding upon the State.

6. Paragraph 10 is denied so far as it alleges the performance of a valid contract existing between the State of Connecticut and the Berlin Iron Bridge Company.

7. The relators deny that any valid contract was ever made with the Berlin Iron Bridge Company by authority of chapter 239 of the Public Acts of 1893 as alleged in paragraph 11 of the return; all allegations in said paragraph consistent with this denial are admitted.

8. Paragraphs 12, 13, and 18 are mere statements of legal conclusions, but so far as they may be claimed to be allegations of fact material to the issue they are denied.

9. Paragraph 16 is admitted.

10. Paragraph 17 is admitted so far as it alleges matters of fact.

11. With regard to paragraph 24, the relators admit that the Berlin Iron Bridge Company, in accordance with the provisions of section 3 of said public act, approved May 24, 1895, and within six months after the passage of said act, presented certain claims and demands to the commission provided for by said section and arising under and by virtue of the pretended or alleged contract made a part of the defendant's return and marked "Exhibit I," but 53 the relators deny the allegation that said claim and demand is now pending before said commission as well as the allegation that no decision has been rendered on said claims and demands. And the relators deny that the expense incurred by said commission was in connection with or in preparation for the construction of a permanent bridge.

12. The relators also admit that the Berlin Iron Bridge Company has not yet brought suit for the construction of said alleged contract marked "Exhibit I," or of any contract with said commissioners, and the plaintiff admits that three years have not elapsed since the 24th day of May, 1895. All other allegations in paragraph 24 are denied.

13. (1) The alleged contract between the State of Connecticut and the Berlin Iron Bridge Company, referred to as "Exhibit I," in paragraph 6 of the defendant's return has, since the filing of said return by the defendant, been discharged, canceled, and surrendered to the State of Connecticut by the said The Berlin Iron Bridge Company, and the State of Connecticut has been released and discharged by the said The Berlin Iron Bridge Company from any and all obligations and claims of every name and nature which existed at the time of such release or might thereafter exist under or by virtue of said alleged contract.

(2) Any and all claims and demands alleged and set forth in the defendant's return as existing against the State of Connecticut and in favor of the Berlin Iron Bridge Company or any other person or party arising under and by virtue of any alleged contract or contracts made and executed by the commissioners appointed under

chapter 239 of the Public Acts of 1893, with any party and particularly with the said The Berlin Iron Bridge Company, have, since the filing of the defendant's return by the defendant, been fully heard and determined by the commission appointed under the provisions of said chapter 168 of the Public Acts of 1895, and the decisions and awards of said commission have in all cases been accepted.

(3) Any and all parties, and particularly the Berlin Iron
54 Bridge Company, having any right to present any claim or demand against the State as set forth and alleged in the defendant's return have been fully heard by said commission and their claims and demands have, since the filing of said return, been decided by said commission and the decision and awards of said commission upon said claims and demands have been each and all accepted by the claimants and fully paid and satisfied by the State in strict conformity to the provision of said chapter 168 of the Public Acts of 1895, and proper receipts, releases, and discharges in full satisfaction of said claims, each and all of them have been executed and delivered to the State by each and all of the claimants and particularly by the Berlin Iron Bridge Company.

14. (1) The relators allege and say that the three commissioners appointed as alleged in paragraph 6 of the return had no authority to execute the alleged contract referred to as "Exhibit I" in paragraph 6 of the return, but that the same was *ultra vires* and void for the reason that

(2) Said alleged contract did not provide for the maintenance of the bridge across the Connecticut river at Hartford as it was then constructed and made, but did provide for an entirely different structure in that the bridge then in existence was a wooden bridge twenty-four feet in width of the value of \$30,000, and could have been rebuilt for the sum of \$75,000, whereas the bridge contracted for was a steel bridge thirty-six feet in width to cost \$325,000, as by the terms of said alleged contract it appears.

(3) Said act of 1893, referred to in paragraph 5 of the return did not authorize said commission to build a new bridge or a bridge of the character called for in said alleged contract.

15. Any and all expenses incurred on account of the temporary bridge constructed by the Berlin Iron Bridge Company as set forth in paragraphs 9 and 10 of the defendant's return have, since the filing of the return, been assumed by the relators and the
55 said The Berlin Iron Bridge Company has released and discharged the State from any and all claims and demands on account of the same in accordance with the provisions of section 11 of said chapter 343 of the Special Acts of 1895.

16. The relators demur to paragraph 14 of the defendant's return, because

(1) It does not appear in said paragraph wherein said act, approved May 24, 1895, and said order, dated September 14, 1895, denies to said towns and to the citizens thereof equal rights under the laws of this State.

(2) It does not appear in said paragraph wherein said act and

order takes the property of said towns and of the citizens thereof without just compensation.

(3) The facts as alleged in said paragraph, including the provisions of said act of May 24th and said order of September 14th therein referred to, do not constitute a valid defense or return to this writ of mandamus in that it does not appear by said act of May 24, 1895, and of said order of September 14, 1895, that the provisions of sections 1 and 11 of article 1 of the constitution of the State of Connecticut have been violated as alleged in said paragraph 14 of said return.

(4) By the decree alleged in paragraph 16 of the defendant's return to have been passed by the superior court for Hartford county on the 10th day of June, 1889, and which decree is made a part of the writ of mandamus marked "Exhibit A," it appears that it has been judicially and finally determined and adjudged by the superior court of this State that the town of Glastonbury will be specially benefited by the lay-out and establishment of the said highway described and set forth in said decree and in the return of the defendant.

And it appears in said decree that the damages assessed as benefits which will accrue to the said town of Glastonbury by reason of the lay-out and establishment of said highway as ordered and adjudged by said court are largely in excess of the proportion required of said town of Glastonbury by the said special act of 1895, and by the order of the relators as set forth in said writ of mandamus.

56 17. The relators demur to paragraph 15 of the defendant's return, because

(1) It does not appear in said paragraph wherein the said town of Glastonbury or the citizens thereof have been deprived of their property without due process of law or wherein the said town or the citizens thereof have been denied the equal protection of the law.

(2) The facts alleged in said paragraph, including the sections of the general statutes therein referred to, do not constitute a valid and legal return or defense to this writ of mandamus, in that it does not appear that by said act referred to in said paragraph 15 of the defendant's return the provisions of article 14 of the amendments to the Constitution of the United States has been violated as alleged.

(3) By the decree alleged in paragraph 16 of the defendant's return to have been passed by the superior court for Hartford county on the 10th day of June, 1889, and which decree is made a part of the writ of mandamus marked "Exhibit A," it appears that it has been judicially and finally determined and adjudged by the superior court of this State that the town of Glastonbury will be specially benefited by the lay-out and establishment of the said highway described and set forth in said decree and in the return of the defendant.

And it appears in said decree that the damages assessed as benefits which will accrue to the said town of Glastonbury by reason of the

lay-out and establishment of said highway as ordered and adjudged by said court are largely in excess of the proportion required of said town of Glastonbury by the said special act of 1895, and by the order of the relators as set forth in said writ of mandamus.

18. The plaintiff demurs to paragraph 22 of the defendant's return, because

(1) Under the provisions of the act referred to in said paragraph 22, the parties are properly and lawfully named and designated.

(2) Under the provisions of said act referred to in paragraph 22, this proceeding in mandamus is brought in every respect and requirement according to law and the allegations in said paragraph 22, as based upon the provisions of said special act of 1895, do not constitute a valid and legal return or defense to the writ of mandamus prayed for by the plaintiffs as it appears in the pleadings.

19. The relators demur to paragraph 19 and the paragraph therein referred to, because

(1) It does not appear in said paragraph wherein the provisions of sections 1 and 11 of article 1 of the constitution of the State of Connecticut have been violated.

(2) The facts and allegations as set forth in paragraphs 14, 19, and 21 of the return and the statutes and order therein referred to do not constitute a valid or legal return or defense to the writ of mandamus, in that it does not appear from said facts, allegations, statutes, and order that said towns or the citizens thereof are denied equal rights under the laws of this State or that the property of said town or the citizens thereof is taken without just compensation.

(3) Because by the decree alleged in paragraph 16 of the defendant's return to have been passed by the superior court for Hartford county on the 10th day of June, 1889, and which decree is made a part of the writ of mandamus marked "Exhibit A," it appears that it has been judicially and finally determined and adjudged by the superior court of this State, that the town of Glastonbury will be specially benefited by the lay-out and establishment of the said highway described and set forth in said decree and in the return of the defendant.

And it appears in said decree that the damages assessed as benefits which will accrue to the said town of Glastonbury by reason of the lay-out and establishment of said highway as ordered and ad-

judged by said court are largely in excess of the proportion required of said town of Glastonbury by the said special act of 1895 and by the order of the relators as set forth in said writ of mandamus.

20. The relators demur to paragraph 20 of the return, because

(1) Said paragraph is a mere statement of legal conclusions and is irrelevant.

21. The relators demur to paragraph 21 of the return, because

(1) It does not appear from the allegations in said paragraph or

in the provisions of the acts and matters therein referred to wherein the equal protection of the laws is denied to the defendant or to the town of Glastonbury or the citizens thereof in violation of article 14 of the amendments to the Constitution of the United States.

(2) The facts and allegations as set forth in paragraph 21 and the paragraphs and statutes therein referred to, do not in law constitute a valid and sufficient return or defense to the writ of mandamus in that it does not appear from said facts and allegations that said treasurer, town, or the citizens thereof are denied the equal protection of the laws in violation of article 14 of the amendments to the Constitution of the United States.

(3) Because by the decree alleged, in paragraph 16 of the defendant's return, to have been passed by the superior court for Hartford county on the 10th day of June, 1889, which decree is made a part of the writ of mandamus marked "Exhibit A," it appears that it has been judicially and finally determined and adjudged by the superior court of this State that the town of Glastonbury will be specially benefited by the lay-out and establishment of the said highway described and set forth in said decree and in the return of the defendant.

And it appears in said decree that the damages assessed as benefits which will accrue to the said town of Glastonbury by reason of the lay-out and establishment of said highway as ordered and adjudged by said court are largely in excess of the proportion required of said town of Glastonbury by the said special act of 1895, and by the order of the relators as set forth in said writ of mandamus.

22. The relators demur to paragraph 23 of the return, because

(1) It does not appear in said paragraph that the special act therein referred to is an act in violation of the 14th article of the amendments to the Constitution of the United States in that it does not appear wherein the property of said town of Glastonbury or of the citizens thereof may be taken in violation of article 14 of the amendments to the Constitution of the United States, as claimed in paragraph 15 of the return.

(2) Because by the decree alleged, in paragraph 16 of the defendant's return, to have been passed by the superior court for Hartford county on the 10th day of June, 1889, and which decree is made a part of the writ of mandamus marked "Exhibit A," it appears that it has been judicially and finally determined and adjudged by the superior court of this State that the town of Glastonbury will be specially benefited by the lay-out and establishment of the said highway described and set forth in said decree and in the return of the defendant.

And it appears in said decree that the damages assessed as benefits which will accrue to the said town of Glastonbury by reason of the lay-out and establishment of said highway as ordered and adjudged by said court are largely in excess of the proportion required of

said town of Glastonbury by the said special act of 1895 and by the order of the relators as set forth in said writ of mandamus.

THE RELATORS,
By SPERRY, McLEAN & BRAINARD,
Their Attorneys.

Filed January 29, 1896.

GEORGE A. CONANT,
Assistant Clerk.

Demurrers herein contained sustained *pro forma* April 7, 1896.

60 Superior Court, Hartford County, October Term, 1895.

STATE *ex Rel.* BULKELEY *et al.* }
vs. }
WILLIAMS, Treasurer. }

Motion for Judgment.

In the above-entitled action the relators move for judgment for want of rejoinder to reply.

SPERRY, McLEAN & BRAINARD,
Attorneys for Relators,
Per McLEAN.

Filed February 11, 1896.

GEORGE A. CONANT,
Assistant Clerk.

Motion overruled, March 27, 1896.

THAYER, *Judge.*

Superior Court, Hartford County, Feb. 14, 1896.

ARTHUR F. EGGLESTON *ex Rel.* }
vs. }
S. H. WILLIAMS, Treasurer. }

Motion to Separate Answers from Demurrers in Relators' Reply.

The respondent represents to the court that the reply of the relators which has been filed in this cause contains various matters of answer, to wit, admissions and denials of certain averments of the respondent's return; and also that the whole of said reply after the 15th paragraph consists of various demurrers to parts of the return, and that said demurrers in law and admissions and denials of fact are contained and connected together in one and the same reply.

This respondent therefore moves the court to order the relators to separate demurrers in law from admissions or denials of the facts, and to state the same in separate pleadings, and that the re-

spondent may have the right to meet matters of fact in one
61 pleading, and demurrs to matters of law in separate pleadings as required by the practice act and the rules of the court.

DEFENDANT,
By his attorney, JOHN R. BUCK.

Filed February 13, 1896.

GEORGE A. CONANT,
Assistant Clerk.

Motion overruled, March 27, 1896.

THAYER, *Judge.*

Superior Court, Hartford County, March 27, 1896.

STATE OF CONNECTICUT *ex Rel.* }
vs. }
S. H. WILLIAMS, Treasurer. }

Order.

The respondent is ordered to file a rejoinder to the thirteenth, fourteenth, and fifteenth (13th, 14th, and 15th) paragraphs of the relator's reply, within one week from the date of this order.

THAYER, *Judge.*

Filed March 27, 1896.

GEORGE A. CONANT,
Assistant Clerk.

Superior Court, Hartford County, April 2, 1896.

ARTHUR F. EGGLESTON *ex Rel.* }
vs. }
S. H. WILLIAMS, Treasurer. }

Respondent's Rejoinder to Reply.

The respondent demurs to so much of the reply as is contained in the 13th, 14th, and 15th paragraphs of the reply and to each and every section of said paragraphs for the following reasons:

62 I. Because the rights of this respondent as they existed under the laws of the State of Connecticut, and of the United States, at the date of the commencement of this action, cannot be altered or varied by any transactions, agreements, or arrangements between the State of Connecticut and the Berlin Iron Bridge Company, since the date of the commencement of this action and of the respondent's return.

II. No averments appear in the first section of paragraph 13 of the reply, which show or tend to show how or in what manner the discharges, releases, surrenders of contract, cancellation of contract in said section described, have either altered or affected the legal

rights of this respondent, as they existed at the commencement of this action.

III. No averments appear in the second section of paragraph 13, which show, or tend to show how or in what manner any decision or award of the commission therein described, or the acceptance of such decision and award by the parties thereto, have any relation to, or alter, or affect the legal rights of this respondent in the present cause as they existed at the date of the commencement of this action, and at the date of the respondent's return thereto; nor is it averred that this respondent was in any manner made a party to the proceedings in said section described, or that he is in any manner bound by the same.

IV. No averments appear in the third section of said paragraph 13, which show or tend to show how or in what manner the payments and satisfaction of certain claims described therein, or receipts, releases, and discharges in satisfaction of said claims, averred to have been executed and delivered to the State by all said claimants, and particularly by the Berlin Iron Bridge Company, have any relation to the rights of this respondent as they existed at the commencement of this action and at the date of the respondent's return thereto. It is not in said section averred that this respondent was a party to any of said transactions, and no averments appear which show or tend to show how or in what manner any of the transactions in said section described have altered, affected, or varied the legal rights as aforesaid of this respondent.

63 V. This respondent has already averred in his return that the act of the General Assembly, approved May 24, 1895, and the special act of said General Assembly, approved June 28, 1895, were in violation of the Constitution of the United States, and of the constitution of the State of Connecticut, and this respondent says that the invalidity of said act is not in law avoided by any payments, releases, discharges, matters of compromise, bargains, arrangements, or transactions of any kind, by or between the State of Connecticut and the Berlin Iron Bridge Company, and nothing appears in said 13th paragraph, or any section thereof, which shows or tends to show how or in what manner the invalidity or unconstitutionality of said act of May 24, 1895, or of said special act of said General Assembly, approved June 28, 1895, has been legally altered, or affected by transactions between the State of Connecticut and the Berlin Iron Bridge Company since the commencement of this action, and since the date of this respondent's return.

VI. This respondent demurs to section 1 of paragraph 14 of the reply, for the reason that said act of the General Assembly of June 29, 1893, and said contract referred to as "Exhibit I," does as matter of law authorize the making and execution of said contract, and the same was not *ultra vires*.

VII. The respondent demurs to the 2d section of paragraph 14, because it appears that said contract does provide in substance for the maintenance across the Connecticut river of the same bridge and highway, and that the purpose of the contract was to maintain

and establish the same bridge and highway across the Connecticut river as had been theretofore maintained. No averments appear in said section which tend to show that the commissioners of the State of Connecticut had not legal authority to build a steel bridge in the place of a wooden bridge, or to build a bridge 36 feet wide in place of a bridge 24 feet wide. There are no averments in this section which tend to show what is the amount of public travel existing at the present time, nor that the bridge contracted for by the

State commissioners was of dimensions, or cost, exceeding
64 the legitimate demands of the public or the objects and purposes of said chapter 139 of the Public Acts of 1893 under which act said bridge and highway were to be maintained by and at the expense of the State of Connecticut.

VIII. The respondent demurs to section 3 of paragraph 14, because said act of 1893 did authorize said commission to build a new bridge of the character called for in said contract.

IX. The respondent demurs to paragraph 15 of the reply, because the legal rights of this respondent as they existed at the date of the commencement of this action cannot be affected by the fact, that the relators since the filing of the return have assumed expenses of a temporary bridge, or that the Berlin Iron Bridge Company has released and discharged the State from all claims and demands on account of the same. This respondent has already averred in his return that said special act, approved June 28, 1895, was and is void, and in violation of the Constitution of the United States, and of the State of Connecticut, and no averments appear in said paragraph 15, which show or tend to show, how the alleged invalidity of said special act has been legally altered, or varied by the releases and discharges in said paragraph 15 set forth.

X. The respondent further demurs to paragraph 15 because no act on the part of the relators, in assuming expenses of a temporary bridge, or of the Berlin Iron Bridge Company in releasing the State from obligations in regard to the same or from claims or demands arising out of the contract between said company and the State, nor any proceeding of the relators, since the commencement of this action and the filing of the return, alleged to be under the special act approved June 28, 1895, can in any way legally determine or affect the validity or constitutionality of said act.

DEFENDANT,
By his attorney, JOHN R. BUCK.

Filed April 2, 1896.

GEORGE A. CONANT,
Assistant Clerk.

Within demurrers overruled *pro forma*, April 7, 1896.

65 Superior Court, Hartford County, April 10, 1896.

ARTHUR F. EGGLESTON *ex Rel.* }
vs.
S. H. WILLIAMS, Treasurer. }

Answer to Part of Relator's Reply.

1. Paragraphs 13 and 15 of the relator's reply are admitted.
2. Sections 1 and 3 of paragraph 14, of the relator's reply are denied. Section 2 of paragraph 14 is admitted.

RESPONDENT,
By his attorney, JOHN R. BUCK

Filed April 10, 1896.

GEO. A. CONANT,
Assistant Clerk.

Superior Court, Hartford County, April 10, 1896.

ARTHUR F. EGGLESTON *ex Rel.*, etc., }
vs.
S. H. WILLIAMS, Treasurer of the Town of Glastonbury. }

Judgment File.

This proceeding by application for a writ of mandamus came to this court at a session thereof, held October 16, 1895, when an alternative writ issued commanding the respondent to obey and conform to the order set out in said application, or show cause to the contrary as on file; whereupon the respondent made return to the October term of 1895, of this court, to wit, on the 25th day of November, A. D. 1895, showing reasons why a peremptory writ should not issue, when the parties appeared and were at issue as on file.

This court having heard the parties upon the issues of fact and law as they appear from the pleadings in the foregoing record, and from the finding of facts as agreed by the parties, sustains the 66 demurrers filed by the relators, overrules the demurrers filed by the respondent, and finds the issues in favor of the relators, and that said return is insufficient, and that the allegations of the application are true, except as modified by the subsequent pleadings, and by said finding of facts, as on file.

Whereupon it is adjudged, *pro forma*, that the applicants recover of the respondent their costs taxed at — dollars, and that a peremptory writ of mandamus do issue, commanding him forthwith on service thereof to pay to the relators, being "The Commissioners for the Connecticut River Bridge and Highway District," the sum of fifteen dollars, in accordance with the order and requisition of said commissioners made on the 14th day of September, 1895, and presented to the town of Glastonbury, and to its treasurer, on the 21st day of

September, 1895, in the manner and form as said order directs, and that the respondent obey and conform in all respects to said order.

ROBINSON, *Judge.*

Superior Court, Hartford County, April 10, 1896.

ARTHUR F. EGGLESTON *ex Rel.*, etc., }
vs. }

S. H. WILLIAMS, Treasurer of the Town of Glastonbury. }

Notice is hereby given of an appeal by the respondent from the judgment of the court in the above-entitled cause to the next term of the supreme court of errors, in and for the first judicial district, to wit: to the term thereof to be holden at Hartford on the first Tuesday of May, 1896.

RESPONDENT,
By his attorney, JOHN R. BUCK.

Filed April 10, 1896.

GEO. A. CONANT,
Assistant Clerk.

67 Superior Court, Hartford County, April 16, 1896.

ARTHUR F. EGGLESTON *ex Rel.*, etc., }
vs. }

S. H. WILLIAMS, Treasurer of the Town of Glastonbury. }

Agreement as to Finding of Facts.

The respective parties in the above-entitled case agree that the following modifications of the allegations of facts and denials shall be made a part of the record, together with and in addition to the facts as they appear from the pleadings.

1. In relation to paragraph six of the return it is admitted that the bridge was out of repair and unsafe for public travel in its then condition, and that said commissioners, under the law of 1892, acted in good faith in the making of said alleged contract.

2. As to paragraph seven, it is admitted that the Berlin Iron Bridge Company incurred expenses in the preparations of plans, services of the agents and employés of said company, in contemplation of the construction of said permanent bridge, under said contract amounting to five thousand seven hundred and seventy-six dollars (\$5,776); said paragraph to be admitted with said modification.

3. It is agreed that paragraph eight shall be amended so as to read as follows:

"On May 17, 1895, while said alleged contract existed, the bridge over said river which connected the towns of Hartford and East Hartford, and which the new bridge provided for by said contract was intended to take the place of, was totally destroyed by fire."

And said paragraph so amended to be admitted.

4. As to so much of paragraph twenty-four of the relators' reply as denies that the sum of money for which the present suit is brought, was expended in construction of a permanent bridge across said river, it is agreed that the said sum of fifteen dollars (\$15) which the defendant refused to pay upon the requisition of the relator, was

68 a part of a sum of money expended east of said river, and wholly in connection with the causeway which, together with the bridge that formerly existed between the towns of Hartford and East Hartford, formed the highway between the towns of Hartford and East Hartford.

5. That a portion of the temporary bridge provided for by said alleged contract, being several rods in length, and extending from the east bank of the Connecticut river, was constructed by said Berlin Iron Bridge Company prior to February 1, 1895, and said company had, up to that date, expended the sum of \$600 in labor on said temporary bridge, and had also purchased material for said temporary bridge to the amount of about \$8,000. After the notice set forth in paragraph nine of the respondent's return, said company completed the temporary bridge, and afterwards, on December 13, 1895, the relator paid to said company for said temporary bridge the amount and price of \$18,000.

6. That the Berlin Iron Bridge Company had a claim and made a demand against the State of Connecticut arising under the contract of November 13, 1894, amounting in the aggregate to the sum of \$72,071, and said company presented said claim and demand to Hon. Dwight Loomis, George W. Hodge, and B. P. Mead, the commissioners appointed under section 3, chapter 168 of the Public Acts of 1895, which commission afterward, on December 7, 1895, awarded to said company the sum of \$27,526 upon said claim and demand.

7. That the State of Connecticut paid to the Berlin Iron Bridge Company for the cancellation of the alleged contract, dated the 13th day of November, 1894, and for the release of all claims under and by virtue of said contract the sum of \$27,526, and surrendered said contract to the State, and gave a written release forever discharging the State of Connecticut from all obligations under the same. A copy of said award is attached to this finding and marked "Exhibit 9." A copy of the vote of the Berlin Iron Bridge Company, authorizing its president to accept said award, and give proper 69 release and discharge to the State of Connecticut, is annexed to this finding and marked "Exhibit 10." A copy of the release and discharge, given by the Berlin Iron Bridge Company to the State of Connecticut, is attached to this finding and marked "Exhibit 10."

8. The act of June 28, 1895, being an act entitled An act creating the Connecticut River bridge and highway district (Private Acts, chapter 343), is hereto attached and marked "Exhibit B."

9. On May 24, 1895, the legislature passed an act entitled An act concerning the Hartford bridge, chapter 168, a copy of which is attached to this finding and marked "Exhibit 8."

10. The respondents admit the existence of a certain decree of the superior court of Hartford county, passed on the 10th of June, 1889, as alleged in paragraph 2 of the complaint, but they do not admit the admissibility of the same as evidence, or any of the conclusions set up in said paragraph. Said decree grew out of proceedings brought under the provisions of "An act to establish free public highways across the Connecticut river," being chapter 126 of the Public Acts of the year 1887, which said act is hereto annexed and marked "Exhibit X."

RELATORS,

By their attorneys, SPERRY, McLEAN & BRAINARD.

RESPONDENT,

By his attorney, JOHN R. BUCK.

In pursuance of the preceding agreement, the court finds the facts therein stated to be the facts in this case.

ROBINSON, *Judge.*

Filed April 16, 1896.

GEORGE A. CONANT,
Assistant Clerk.

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"EXHIBIT 9."

(Annexed to finding.)

Award of Commissioners to the Berlin Iron Bridge Company.

The undersigned, a commission appointed under section 3, chapter 168 of the Public Acts of 1895, to hear and determine all legal claims and demands not to exceed forty thousand dollars (\$40,000), presented to us within six months from and after the passage of said act, and arising under or by virtue of any contract made and executed by the commissioner appointed under chapter 239 of the Public Acts of 1893, with any party, particularly with the Berlin Iron Bridge Company of Berlin, Connecticut, having had presented to us, within the time limited by said act, the claim of said bridge company, which claim, by reference made part of this finding marked "A," having met said bridge company with its witnesses and counsel, and the State of Connecticut represented by its counsel, pursuant to previous agreement, at the supreme court room in the capitol at Hartford, on the 26th and 29th days of November, and the 7th day of December, A. D. 1895, and having fully heard and considered the evidence and arguments then and there offered, we find that the said Berlin Iron Bridge Company has a legal claim and demand against the State of Connecticut, arising under and by virtue of a contract dated the 13th day of November, A. D. 1894, made and duly executed by the commissioners appointed under said act of 1893, with said Berlin Iron Bridge Company, amounting in the aggregate to the sum of twenty-seven thousand, five hundred and twenty-six dollars (\$27,526), and we do hereby award and determine that the State of Connecticut pay to said Berlin Iron

71 Bridge Company, on demand, the sum of twenty-seven thousand, five hundred and twenty-six dollars (\$27,526), which is to be in full of all said claims and demands marked "A."

Dated at Hartford, Connecticut, December 7, A. D. 1895.

DWIGHT LOOMIS.

GEORGE W. HODGE.

BENJ. P. MEAD.

COMPTROLLER'S OFFICE,

HARTFORD, April 4, 1896.

I hereby certify that the above is a correct copy of the original on file in this office.

E. W. MOORE,

For Comptroller.

Filed April 16, 1896.

GEORGE A. CONANT,

Assistant Clerk.

"EXHIBIT 10."

(Annexed to finding.)

Vote of Directors of the Berlin Iron Bridge Company Accepting Award of Commissioners.

Voted: That this company hereby accepts the award of \$27,526, made by the commission appointed to pass upon the claims of this company by chapter 168 of the Public Acts of 1895, in full of all claims and demands which this company now has against the State of Connecticut on account of the contract made by this company to construct a bridge across the Connecticut river at Hartford; and Chas. M. Jarvis of this company is hereby authorized to surrender the said contract to the State of Connecticut and to sign all necessary receipts, releases, and discharges necessary to carry this vote into effect.

I hereby certify that the foregoing is a true copy of the vote passed by the board of directors of the Berlin Iron Bridge
72 Company at a meeting legally called and held for that purpose on the 13th day of December, 1895.

Attest:

GEO. H. SAGE, *Secretary.*

STATE OF CONNECTICUT, {
Comptroller's Office. }

HARTFORD, CONN., April 4, 1896.

I hereby certify that the above and foregoing is a correct copy of the original on file in this office.

E. W. MOORE,

For Comptroller.

Filed April 16, 1896.

GEORGE A. CONANT,

Assistant Clerk.

"EXHIBIT 11."

(Annexed to finding.)

Release of the Berlin Iron Bridge Company to the State of Connecticut.

\$27,526.

HARTFORD, CONN., December 13, 1895.

Received of the State of Connecticut the sum of twenty-seven thousand, five hundred and twenty-six dollars, in full of award made on the 7th day of December, 1895, by Hon. Dwight Loomis, Hon. Benj. P. Mead, comptroller, and Hon. George W. Hodge, treasurer of the State of Connecticut, acting as a commission constituted by chapter 168 of the Public Acts of 1895, and all other claims presented by this company to said commission are hereby withdrawn, and this payment is received in full satisfaction and discharge of all claims and demands of every nature which this company has or ought to have, arising under or by virtue of any contract made and executed by the commission appointed under chapter 239 of
 73 the Public Acts of 1893 with this company, and the within contract is hereby surrendered to the State of Connecticut.

THE BERLIN IRON BRIDGE COMPANY,
 By CHARLES W. JARVIS, *Pres't.*

STATE OF CONNECTICUT, }
Comptroller's Office. }

HARTFORD, CONN., April 8, 1896.

I certify that the foregoing is a true and correct copy of the original voucher on file in this office.

JOHN H. WADHAMS,
Assistant Clerk.

[SEAL.]

Filed April 16, 1896.

GEORGE A. CONANT,
Assistant Clerk.

EXHIBIT "B."

(Annexed to finding.)

CHAPTER CCCXLIII.

Creating the Connecticut River Bridge and Highway District.

Resolved by this assembly:

SECTION 1. That the towns of Hartford, East Hartford, Glastonbury, Manchester, and South Windsor be, and they are hereby created a body politic and corporate, with power to sue and be sued, under the name of the Connecticut River bridge and highway district, for the construction, reconstruction, care, and maintenance of a free public highway across the Connecticut river at Hartford and the causeway and approaches appertaining thereto, as described in

a decree of the superior court of Hartford county, passed on the tenth day of June, 1889, in which decree said highway was laid out and established.

74 SEC. 2. Morgan G. Bulkeley, Meigs H. Whaples, John G. Root, and John H. Hall of Hartford, James W. Cheney of Manchester, Alembert O. Crosby of Glastonbury, John A. Stoughton of East Hartford, and Lewis Sperry of South Windsor are hereby appointed commissioners for said district with authority to maintain said free public highway, and whenever public safety or convenience may require, to erect new bridges along or upon said highway, to reconstruct, raise, and widen the causeway and approaches appurtenant to or a part of said highway, at the expense of the towns named in section one of this act and composing said bridge district, at a cost not exceeding five hundred thousand dollars. Said board of commissioners shall organize by the choice of a president, secretary, and treasurer, and shall by lot divide themselves into three classes; the term of office of the first class shall expire on the first day of July, 1898, of the second class July first, 1899, of the third class July first, 1900. Said board shall have authority to employ such other officers, engineers, and agents as may be found necessary for the transaction of its business. Whenever a vacancy occurs in said board by death, resignation, refusal to serve, or expiration of term of office, such vacancy shall be filled by the town in which such retiring member resides at an annual or special town meeting. No member of said commission shall receive any compensation except actual expenses incurred in the performance of his duties.

SEC. 3. Any damages resulting from the defective condition of said highways or the bridges upon the same shall be paid by said board as a part of cost of maintenance. Actions may be brought against said board by service upon its secretary and any judgment recovered therein shall be paid by said board in the same manner as herein provided for the payment of the expenses of repairs and maintenance. Said board shall annually report to said several towns the expenses incurred and paid by them during the preceding year.

75 SEC. 4. For the purpose of providing means for the construction of a new bridge or bridges along said highway, or for the permanent improvement of said causeway or approaches by widening or raising the same, the said board of commissioners is hereby authorized to issue the bonds of said district to an amount not exceeding five hundred thousand dollars to run for not exceeding fifty years, and bearing a rate of interest to be determined by said commissioners, payable semi-annually; provided, that not less than ten thousand dollars of said bonds shall be made due and payable each and every year from the date of issue. Said bonds shall not be sold at less than par, and shall be exempt from taxation. They shall be signed by the president of said board and countersigned by both the secretary and treasurer. To provide for the payment of said bonds as they mature, and interest upon the same, the several towns named in the first section of this act shall

annually, on or before the fifteenth day of July of each year, until all above-described bonds have matured or been paid, pay over to the treasurer of said bridge commission, on his written order, a sum equal to twenty-five cents on each one thousand dollars of the grand list of such town until the proportionate cost to each of said towns as hereinafter provided has been fully paid in the following proportions, that is to say: the town of Hartford shall pay seventy-nine one-hundredths; East Hartford, twelve one-hundredths; Glastonbury, three one-hundredths; Manchester, three one-hundredths; and South Windsor, three one-hundredths of the cost thereof; and for the ordinary support and maintenance of said highway said towns shall from time to time, upon the order of said commissioners, pay such further sums as said commissioners may determine as the proportion of said towns under the provisions of this resolution, and said towns are hereby authorized and directed to provide for such payments in the annual tax levy of said towns.

SEC. 5. Fifty per centum of all taxes paid to the State by all street railway companies using any bridge crossing said river between said towns either directly or by virtue of any traffic or
76 other arrangement for the next five years, and thereafter ten per centum, shall annually be paid by the treasurer of the State, upon the order of the comptroller, to the treasurer of said commission. When any work on said highway, bridges, or approaches to an amount exceeding five thousand dollars shall be contemplated, the commissioners shall advertise for bids for the same, under such regulations as they may prescribe.

SEC. 6. In order to provide for the accommodation and use of street railways now or heretofore operating their roads over said free public highway, said commissioners are directed, in constructing a new bridge or bridges or widening or raising said causeway, to provide the necessary accommodation for such railways upon such terms as to participation in cost of construction or for maintenance as may be agreed upon between said street railway companies and said board of commissioners. The provisions of this section shall not be so construed as to interfere with or infringe upon any rights heretofore acquired by the Hartford Street Railway Company under its charter or in any other legal manner to use said highway for street railway purposes nor to relieve said company from the payment of its proportionate cost of construction and maintenance as is herein provided, and upon payment of such proportionate cost of construction and maintenance, or upon said company's becoming obligated to pay the same in such manner as may be agreed upon between said company and said commissioners or as may be ordered by the railroad commissioners as hereinafter provided, the said The Hartford Street Railway Company shall continue to have the right, subject to the control and direction of the commissioners having charge of said highway as hereinafter provided, to lay its tracks, construct and operate its street railway upon and over said highway, but the location and construction of its tracks, wires, conductors, fixtures, and all its structures shall be subject to the control and direction of said bridge commis-

sioners, and the same may be placed, located, and constructed, replaced, relocated, and reconstructed from time to time in such manner as the said commissioners may approve, and except as above provided, all the provisions of law applicable to the use of highways by street railway companies shall apply to the use of said highway by said company, except that in respect thereto the said bridge commissioners shall be substituted for and shall in all respects take the place of the selectmen of a town as is now provided by law in the case of an ordinary highway. Whatever necessary expense has been or may be incurred by said company for the safety or accommodation of public travel over said highway from the date of the approval of an act entitled An act concerning the Hartford bridge, approved May 24, 1895, until the commissioners herein appointed shall assume control of said highway under the provisions of this act shall be adjusted and paid by said commissioners to said company as a part of the cost of maintenance of said highway, and in case the said commissioners and said company fail to agree as to said amount or as to the proportionate cost of construction or maintenance as is hereinbefore provided, the same shall be determined by the board of railroad commissioners, who are authorized and directed, upon the application of either of said parties and upon reasonable notice to the other, to hear and determine said questions, or any of them, and their decision shall be final and conclusive.

SEC. 7. Said commissioners are empowered to make any and all orders and to do all things necessary for the construction, reconstruction, and improvement of said highway, and the causeway and approaches appurtenant thereto, including all bridges necessary for the safety and convenience of public travel. The orders of said commissioners shall be obligatory upon the several towns named in section one of this act, and such orders shall be sufficient authority for the treasurer of each of said towns to pay to said commission or its treasurer any sum required to be paid by the towns named in such order. Said commissioners are authorized to apply to any court of competent jurisdiction, whether of State or the United States, for and in any matter appertaining to said work, and to procure the enforcement and execution of their orders, and the courts of this State are hereby fully empowered, upon proper proceedings brought by or at the instance of said commissioners or any interested party, to enforce by mandamus or otherwise the orders of said commissioners made under authority of this resolution.

SEC. 8. In the event that any commissioner named in this resolution shall refuse or neglect to act, the selectmen of the town in which such person resides shall appoint some person to act in his stead, until such vacancy has been filled by said town at an annual or a special town meeting called for that purpose; but until such vacancy is filled the remaining commissioners shall constitute such board, and any orders made by a majority of them shall be the orders of said board of commissioners and binding as such; nor shall the failure of any of the commissioners named in this resolu-

tion, or of any persons hereafter appointed, to act, in any way, affect the powers of said board or proceedings under this resolution.

SEC. 9. The commissioners appointed under chapter CCXXXIX of the Public Acts of 1893 are hereby authorized and directed to turn over to the board of commissioners herein appointed, immediately on the organization of said board, all the property, of every name and nature in their hands or under their control, under the act of 1893, heretofore referred to, including all books, papers, and contracts.

SEC. 10. Any town named in this resolution as a part of the district herein created may acquire and succeed to all the rights acquired by any other town or towns under the provisions of this resolution, or chapter CXXVI of the Public Acts of 1887, approved May 19, 1887, and may assume all duties, obligations, and payments imposed upon such other town or towns by a majority vote of any special town meeting called for that purpose, upon such terms as may be agreed upon by such towns; and if any town shall vote to acquire the rights and assume the duties, obligations, and payments imposed upon any other town or towns, such other town or towns may surrender such rights and transfer such duties, obliga-

79 tions, and payments to the town agreeing to assume the same by a majority vote of the electors present at a special town meeting called for that purpose. Whenever such rights as aforesaid have been acquired by another town, and the duties, obligations, and payments provided in this resolution for such town have been assumed by another town, the term of office of the commissioner residing in said town shall at once expire, and the right of such town to appoint his successor shall cease and thereafter devolve upon the town acquiring said rights and assuming such duties, obligations, and payments. Within twenty days after the passage of this resolution it shall be the duty of the selectmen of the town of Hartford to call a special town meeting to consider a proposition to acquire the rights of the towns of Manchester, Glastonbury, and South Windsor, and to assume the duties, obligations, and payments imposed upon the towns named, or either of them, under the provisions of this act, or chapter CXXVI of the Public Acts of 1887.

SEC. 11. The board of commissioners appointed under this resolution shall have authority to assume the cost of construction of the temporary bridge now being erected over the Connecticut river as a part of said highway; and in case said board shall assume the cost of construction as aforesaid, the comptroller shall turn over any and all moneys received for insurance on account of the destruction of any portion of said highway by fire. Said board of commissioners is hereby authorized to locate the western terminus of the bridge over the Connecticut river at a point at or near the corner of Morgan and Market streets, and the eastern terminus at such a point upon the causeway, as said board may determine, for the purpose of rendering said bridge at all times available for public travel; and the common council of the city of Hartford is hereby authorized to grant the right of way through or over Morgan street in said city; and said board of commissioners is further authorized to negotiate and

agree with the New York, New Haven & Hartford Railroad Company for such changes or alterations in its tracks as now
80 located as may be found necessary, upon such terms as it may deem equitable.

SEC. 12. So much of section two of an act concerning the Hartford bridge, approved May 24, 1895, as fixes the proportions of cost of construction and maintenance to be paid by said several towns, is hereby expressly repealed, and the provisions of this resolution shall operate as an amendment to said act, in respect to the proportions of said cost of construction and maintenance; but nothing in this resolution shall be construed as interfering with the rights of any person or persons under the act approved May 24, 1895.

SEC. 13. Any acts or parts of acts inconsistent with this resolution are hereby repealed.

Approved, June 28, 1895.

STATE OF CONNECTICUT, OFFICE OF THE SECRETARY.

I, William C. Mowry, secretary of the State of Connecticut, and keeper of the seal thereof, and of the original record of the acts and resolutions of the General Assembly of said State, do hereby certify that I have compared the annexed copy of the resolution creating the Connecticut River bridge and highway district with the original record of the same now remaining in this office, and have found the said copy to be a correct and complete transcript thereof.

And I further certify, that the said original record is a public record of the State of Connecticut, now remaining in this office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said State, at Hartford, this 28th day of June, 1895.

[L. S.]

WILLIAM C. MOWRY, *Secretary.*

Filed April 16, 1896.

GEORGE A. CONANT,
Assistant Clerk.

81

“EXHIBIT 8.”

(Annexed to finding.)

CHAPTER CLXVIII.

An Act Concerning the Hartford Bridge.

Be it enacted by the senate and house of representatives in General Assembly convened:

SECTION 1. Chapter CCXXXIX of the Public Acts of 1893 is hereby repealed.

SEC. 2. From and after the passage of this act, the towns of Hartford, East Hartford, Glastonbury, South Windsor, and Manchester shall, except as hereinafter provided, maintain the highway across the Connecticut river, where the bridge formerly conducted by the Hartford Bridge Company as a toll-bridge now is, and across said bridge, and across and along the causeways and approaches ap-

purtenant to and connected therewith, and the expense of such maintenance shall be paid by said towns in proportion to the assessment made upon said towns by the superior court in the proceedings in which said highway was laid out and established; that is to say: Hartford, ninety-five two-hundred-and-tenths; East Hartford, sixty-six two-hundred-and-tenths; Glastonbury, twenty-five two-hundred-and-tenths; South Windsor, twelve two-hundred-and-tenths; Manchester, twelve two-hundred-and-tenths. Except as hereinafter provided, whenever it shall be necessary to erect any new bridge or bridges along or upon or for said highway so laid out and established, as aforesaid, the same shall be erected and built and thereafter maintained and kept in repair by said towns at an expense to be borne by them in the same proportion among themselves, as aforesaid. Fifty per centum of all taxes paid to the State by all street railway companies using any bridge crossing said river between said towns, for the next five years, and thereafter ten per centum shall annually be paid by the treasurer of the State

82 upon the order of the comptroller to the treasurers of said towns, in proportion to said assessments made upon said towns respectively, as aforesaid.

SEC. 3. Hon. Dwight Loomis of Hartford and the comptroller and treasurer of the State are hereby constituted a commission to hear and determine all legal claims and demands, not to exceed forty thousand dollars, presented to them within six months from and after the passage of this act, arising under or by virtue of any contract made and executed by the commissioners appointed under chapter CCXXXIX of the Public Acts of 1893, with any party, particularly with the Berlin Iron Bridge Company of Berlin, Connecticut. In case said commission shall decide that any party or parties, particularly the Berlin Iron Bridge Company, have any legal claims or demands against the State, not exceeding in the aggregate said sum of forty thousand dollars, they shall file their decision, in writing, in the office of the comptroller, and thereupon said comptroller is authorized to draw his order or orders upon the treasurer of the State for such sum or sums as may be fixed and agreed upon by said commission as being due to any such party or parties, and said order or orders shall be paid from the State treasury upon proper receipts, releases, and discharges being executed and delivered to the State.

SEC. 4. If any such party or parties, particularly the Berlin Iron Bridge Company, shall not be satisfied with the decision of said commission, permission and authority is hereby given to such party or parties, particularly the said The Berlin Iron Bridge Company, at any time within three years from and after the passage of this act, to commence and prosecute a suit or suits against the State of Connecticut, in the superior court for Hartford county, for any legal claim, debt, or demand arising under or by virtue of any valid contract made and executed by said commission under and by the provisions of said public act of 1893, acting within the legal scope of their authority, with any party, and particularly with the said The

83 Berlin Iron Bridge Company, or for the construction of any contract with said commissioners alleged by such plaintiff to be valid and binding upon the State of Connecticut, according to the ordinary procedure in civil actions in the State; and in any event, whether said contract shall be held valid or not, said The Berlin Iron Bridge Company shall be entitled to recover for all material furnished, and all expenses of every kind actually incurred under, in relation to, or in connection with said contract, including therein all legal and personal expenses.

SEC. 5. Said suit or suits shall be commenced by complaint as by law prescribed in civil actions, and service of said process shall be made by any proper officer by leaving a true and attested copy of the same with the comptroller of the State, or at his office in the city and county of Hartford, at least twelve days before the return day of the same.

SEC. 6. The comptroller is hereby directed to appear and defend in the name of the State in any such suit or suits, and to employ counsel to conduct such defenses, and fully to protect and defend the interests and rights of the State therein.

SEC. 7. If any final judgment or judgments shall be rendered in any such suit or suits against the State, then the comptroller shall draw his order or orders for the same on the treasurer of this State, by whom such order or orders shall be paid from the treasury of the State.

SEC. 8. If any contract for the building of a bridge over the Connecticut river, between the towns of Hartford and East Hartford, alleged to have been made by said commissioners with the Berlin Iron Bridge Company, shall be declared valid and binding, upon any complaint brought for its construction as hereinbefore provided, then the comptroller is authorized and directed to carry out and complete said contract, according to the provisions thereof, and to employ a competent engineer to supervise the construction of such bridge, and to draw his order or orders upon the State treasurer for the same and for said cost of supervision; but nothing in this act shall be construed as relieving the said towns of Hartford, East Hartford, Glastonbury, South Windsor, and Manchester, upon the passage of this act, from the duty of maintaining and 84 repairing the present and all other necessary bridges, causeways, and appurtenances, across said river, between said towns, or rebuilding, whenever necessary, such new bridge as may, under the provisions of this section, be erected by the State. In case such new bridge shall be constructed at the expense of the State, as provided for in this section, the provision for the payment to said towns of fifty per cent. of the taxes from street railway companies using such new bridge annually for five years, shall not take effect, but ten per cent. of all such taxes shall annually be paid by the treasurer of the State, upon the order of the comptroller, to the treasurer of said towns, in proportion to the assessments made upon said towns, respectively, as aforesaid.

SEC. 9. This act shall take effect from its passage.

Approved May 24, 1895.

STATE OF CONNECTICUT, OFFICE OF THE SECRETARY.

I, William C. Mowry, secretary of the State of Connecticut, and keeper of the seal thereof, and of the original records of the acts and resolutions of the General Assembly of said State, do hereby certify that I have compared the annexed An act concerning the Hartford bridge with the original record of the same now remaining in this office, and have found the said copy to be a correct and complete transcript thereof.

And I further certify that the said original record is a *a* public record of the State of Connecticut, now remaining in this office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said State, at Hartford, this 28th day of June, 1895.

[SEAL.]

WILLIAM C. MOWRY, *Secretary.*

Filed April 16, 1896.

GEORGE A. CONANT,
Assistant Clerk.

85

EXHIBIT "X."

(Annexed to finding.)

CHAPTER CXXVI.

*An Act to Establish Free Public Highways Across the Connecticut River in Hartford County.**

Be it enacted by the senate and house of representatives in General Assembly convened:

SECTION 1. The State's attorney for the county of Hartford is hereby authorized and directed to forthwith bring a complaint in the name of the State to the superior court for said county against the corporations owning toll-bridges across the Connecticut river in said county, for the purpose of carrying out the objects and provisions of this act. Said complaint shall be served upon said corporations by some proper officer leaving a true and attested copy thereof with the secretary of each of said corporations at least twelve days before the return day of said complaint. In case either of said corporations shall have no secretary within this State, service may be made upon any person having charge of the bridge of such corporation. Notice of the pendency of said complaint shall be given to all towns interested therein, by the publication of an order of notice issued and signed by a judge of said court or by the clerk thereof, in two daily newspapers published in Hartford for six days consecutively at least twelve days before the return day of said complaint, and by such other notice as said court shall order, and any such town may appear and be made a party to said complaint at any time within thirty days from the return day thereof or within such further time as said court shall order. Said court shall

*Amended by senate joint resolution, No. 157 (Special Laws, No. 310).

86 have full power to make any order or decree necessary or expedient to carry out the object and provisions of this act, and in addition to the powers herein specially conferred shall have in respect to said proceeding such other powers as said court has in respect to civil actions pending therein.

SEC. 2. Upon said complaint said court shall appoint three commissioners, who, first being sworn, shall lay out and establish highways across the Connecticut river where the toll-bridges in said county now are, and across said bridges and across and along the causeways and approaches appurtenant to and connected therewith. Said court may, in its discretion, appoint three commissioners for each or any of said highways so to be laid out, who shall appraise the damages in the cases of said highways respectively, but all of said commissioners so appointed shall act as a joint commission in assessing the benefits, as hereinafter provided. Said highways when laid out and established as herein provided shall be free public highways.

SEC. 3. Said commissioners, after such notice as said court shall prescribe to the towns which they shall deem interested, shall estimate and assess the damages caused by the lay-out and establishment of such free highways, and shall estimate and assess said damages upon the several towns which they shall find will be specially benefited by the lay-out and establishment of said highways as benefits accruing to said several towns, in such proportion as said commissioners shall find to be equitable. In laying out said highways and assessing said damages, said commissioners shall include the damages to the franchise and to any other property of any corporation whose property shall be taken by the lay-out of said highways.

SEC. 4. Said commissioners shall report to said court, in writing, their doings, stating particularly the lay-out of said highways, the amount of damages assessed against each person or corporation, and the benefits assessed to each town. Any party interested in said report may remonstrate against the acceptance of the same for

87 any irregularity or improper conduct on the part of said commissioners, and said court, in case of such irregularity or improper conduct, may order a rehearing before said commissioners, or may appoint three other commissioners in the same manner and with the same powers and duties as provided in section three of this act. But if said court shall accept said report or such other report as said commissioners shall make or as said other commissioners shall make, such accepted report shall be final and conclusive as to all matters therein contained, and said court shall render judgment thereon against said several towns for the amount assessed against them respectively, and the clerk of said court shall forthwith notify each of said towns of the judgment against it, by mailing to the clerk thereof a notice specifying the date and amount of such judgment.

SEC. 5. Said towns so assessed shall, within three months from the rendition of said judgment, deposit with the treasurer of this State the sums so severally assessed against them, and at the expi-

ration of said three months the comptroller shall draw his order on the treasurer in favor of the several persons or corporations in whose favor damages have been assessed for the amount of damages so assessed respectively, and said treasurer shall hold the amount thereof for the benefit and subject to the order of the several parties in whose favor said orders were drawn, and shall notify said several parties that he so holds said amounts, and thereupon said highways so laid out as aforesaid shall become and remain public highways. In case any town shall fail to pay the judgment rendered against it as aforesaid, within the time aforesaid, said court shall order execution upon said judgment to be issued against said town in favor of the State.

SEC. 6. Each town so assessed as aforesaid shall have power to borrow money to pay its said assessment, and to repay the amount so borrowed shall have power to issue its bonds for such an amount as shall be required for such purpose, which bonds shall be signed by its selectmen and countersigned by its treasurer, and shall be of such denomination and for such time and shall bear such rate of interest as said town shall determine, which said bonds shall be free from taxation.
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SEC. 7. When said highways, so established as aforesaid, shall have become free public highways as aforesaid, the same shall thereafter be maintained by said towns so assessed in proportion to the assessment upon said towns as hereinbefore provided. The first selectmen of said several towns shall meet on the second Monday after said highways shall have become free highways as aforesaid, at the office of the selectmen in Hartford, and annually thereafter and at such other times as they shall deem necessary, and said several first selectmen shall constitute a board for the care, maintenance, and control of said highways. Said board shall appoint a chairman, secretary, and treasurer; and said board shall apportion the expense of repairing and maintaining said highways upon the said several towns in proportion to the assessment against said towns as aforesaid, and said chairman shall draw his order on the respective treasurers of said towns to the order of the treasurer of said board for the proportional amount payable by said towns as aforesaid for such repairs and maintenance. Any damages resulting from the defective condition of said highways or the bridges upon the same, shall be paid by said towns in proportion to the said assessment. For the purpose embraced in this section said board shall be a body politic and corporate by the name of The Board for the Care of Highways and Bridges Across the Connecticut River in Hartford County, and actions may be brought against said board by service upon its secretary, and any judgment recovered therein shall be paid by said towns in said proportions and in the same manner as herein provided for the payment of the expenses of repairs and maintenance as aforesaid. Said board shall annually report to said several towns the expenses incurred and paid by them during the preceding year.

SEC. 8. The services and expenses of said commissioners and the expenses incurred by the State's attorney under this act, including

such assistance as he may employ, shall be taxed by said court and paid by the State.

89 SEC. 9. All causeways and other real estate belonging to the owners of said toll bridges respectively, and which are used in connection with said bridges or for the maintenance or protection of said causeways, shall be considered under this act and the same are declared to be approaches appurtenant to and connected with said bridges, and the several toll-houses are declared to be a part of the toll-bridge with which they are connected.

Approved May 19, 1887.

STATE OF CONNECTICUT, GENERAL ASSEMBLY,
JANUARY SESSION, A. D. 1887.

(*Senate Joint Resolution No. 157.*)

(310.)

Concerning bridges across the Connecticut river at Enfield and Windsor locks.

Resolved by this assembly:

That the act entitled "An act to establish free public highways across the Connecticut river in Hartford county," passed at the present session of the General Assembly, shall not be applicable to or affect the toll-bridge owned by the Windsor Locks and Warehouse Point Bridge and Ferry Company, located at Windsor Locks, nor the toll-bridge owned by the company for erecting and supporting a toll-bridge with locks from Enfield to Suffield, commonly called the "Enfield Bridge Company," and located between the towns of Suffield and Enfield, nor shall the provisions of said act be applicable to or in any manner affect the franchise privileges or any other property belonging to either of said corporations.

Approved May 19, 1887.

Filed April 16, 1896.

GEORGE A. CONANT,
Assistant Clerk.

90 Superior Court, Hartford County, April 17, 1896.

ARTHUR F. EGGLESTON *ex Rel.*, ETC.,

vs.

S. H. WILLIAMS, Treasurer of the Town of Glastonbury. }

Respondent's Appeal.

In the above-entitled cause the respondent appeals from the judgment of said court to the supreme court of errors, to be held at Hartford, in and for the first judicial district, on the first Tuesday of May, 1896, for the revision of the errors which he claims to have occurred in the trial thereof and in the rendition of said judgment, and for reasons of said appeal he assigns the following:

1. The court erred in sustaining the demurrers filed by the relators to the respondent's return and in sustaining the respective causes of demurrers set forth in each of said demurrers.

2. The court erred in overruling the demurrers filed by respondent and in overruling the respective causes of demurrers set forth in each of said demurrers.

3. The court erred in holding upon the facts set forth in the application and in the return of the respondent as modified by the subsequent pleadings and by the finding of facts that said return was insufficient.

4. The court erred in ruling and holding that the contract of November 13, 1894, was not a valid contract between the State of Connecticut and the Berlin Iron Bridge Company, as set forth in paragraph six of respondent's return, at the time of the approval of the act of May 24, 1895.

5. The court erred in holding that the temporary bridge constructed by the Berlin Iron Bridge Company as set forth in paragraphs 7, 9, and 10 of the return, was not constructed under and by virtue of the contract of November 13, 1894.

6. The court erred in ruling and holding that "An act concerning the Hartford bridge," approved May 24, 1895, being chapter 168 of the Public Acts of 1895,—and the special act entitled 91 "Creating the Connecticut River bridge and highway district," approved June 28, 1895, and the order and requisition of the commissioners passed September 14, 1895, as set forth in paragraphs 12, 13, and 14 of the return, were not in violation of the Constitution of the United States or of the constitution of the State of Connecticut, and were valid and binding acts, and that all the doings and proceedings of said commissioners of the Connecticut River bridge and highway district being the relators in the present application, including the order and requisition made on the town of Glastonbury and on the respondent, as treasurer of said town, are valid and binding in law.

7. The court erred in ruling and holding that said public act approved May 24, 1895—and said special act, approved June 28, 1895, and the proceedings of said commission, do not deny to the respondent and to said town of Glastonbury, of which he is treasurer, and to the citizens of said town, the equal protection of the laws and especially of sections 2665, 2666, 2667, and 2768 of the General Statutes of this State, and do not deprive said town and the citizens thereof of the equal protection of the laws, and is not in violation of the Constitution of the United States nor of article 14 of the amendments thereof.

8. The court erred in ruling and holding upon the facts as they appear upon the record that said public and private acts, and the order and requisition of said commissioners for the Connecticut River bridge and highway district, passed and made on September 14, 1895, and all proceedings under the same were and are in accordance with the provisions of the Constitution of the United States, and were and are valid and binding under said Constitution.

9. The court erred in ruling and holding upon the facts as they

appear upon the record that said public and private acts and the order and requisition of said commissioners for the Connecticut River bridge and highway district passed and made on September 14, 1895, and all proceedings under the same, were and are in accordance with the provisions of the constitution of the State of Connecticut, and were and are valid and binding under said constitution.

92 10. The court erred in ruling and holding that the provisions for the issue of bonds as provided in section 4 of said special act, approved June 28, 1895, are valid and binding on this respondent and the town of Glastonbury, and the other towns named in said act, and that said town of Glastonbury and said other towns and the citizens thereof, can be compelled to pay said bonds although under said act they have no voice in issuing them.

11. The court erred in ruling and holding that it is the duty of the town of Glastonbury, and that it is obliged by law to maintain the highway across the Connecticut river and across and along the causeway and approaches thereto as set forth in said public act, approved May 24, 1895.

12. The court erred in ruling and holding that power is given in said special act to said commissioners to institute suits in their own names, and that this action is properly brought in the name of said commissioners.

13. The court erred in ruling and holding that it is not necessary that all of the five towns of Hartford, East Hartford, Glastonbury, Manchester, and South Windsor, which constitute a corporation as provided in said special act, approved June 28, 1895, should be joined as respondents in the present cause.

14. The court erred in ruling and holding that the rights of the respondent can be and are affected by transactions and agreements between the Berlin Iron Bridge Company and the State of Connecticut since the commencement of this action, and the filing of the respondent's return.

15. The court erred in ruling and holding that the board of commissioners created by the act approved June 29, 1893, for the care, maintenance, and control of the highways across the Connecticut river at Hartford, as set forth in said act, did not have the right to provide in said contract of November 13, 1894, that the bridge provided for in said contract should be of steel, and that said act of June 29, 1893, did not authorize said commissioners to build a new bridge of the character called for in said contract.

93 16. The court erred in holding that the respondent's return was insufficient in law because paragraphs 14, 15, 19, 21, and 23 do not allege particularly the reasons for the allegations that said public and private acts and that the order of said commissioners and the proceedings in question are in violation of the Constitution of the United States and of the State of Connecticut, and in holding and ruling that it does not appear in said paragraphs wherein said acts, order and proceedings deny to the respondent, The Town of Glastonbury, and to the citizens thereof, equal rights under the law, or the equal protection of the laws, or wherein said acts, order,

and proceedings take property of the respondent, or of the town of Glastonbury, or of the citizens thereof, without due process of law.

17. The court erred in ruling and holding that there is any rule of apportionment of the expense for the ordinary support and maintenance of said highway, and in overruling the claim of the respondent, that because under section 4 of said special act, the towns named therein, including the town of Glastonbury, are to pay such further sums for the ordinary support and maintenance of said highway, as said commissioners may determine as the proportion of said town; that therefore said section is void, as it states no rule or standard for the action of said commissioners in determining said proportions.

18. The court erred in not holding the special act of June 28, 1895, to be unconstitutional and void, because said act undertakes to authorize commissioners to issue the bonds of the district to an amount not exceeding five hundred thousand dollars, but provides no method of raising money by taxation in order to pay said bonds.

19. The court erred in sustaining demurrers in the reply, paragraph 17, section 3; paragraph 19, section 3; paragraph 20, section 3, and section 4, subdivision (2), because no decree of the superior court passed in 1889 has any legal effect upon the constitutionality of the act of May 24, 1895, and the act of June 28, 1895.

94 20. The court erred in sustaining the demurrer in the last assignment of error named, because the question whether the town of Glastonbury is specially benefited, or how much benefited, has in law no effect upon the question whether the two acts of 1895 above mentioned are constitutional or valid.

21. The court erred in holding the public and also the special act of 1895 aforesaid to be constitutional and valid, because the territory which is occupied by the Connecticut river is not within the legal limits of any of said five towns, but is the territory of the State of Connecticut, and the General Assembly does not possess the power under the constitution to compel towns to build bridges outside their own limits, and upon territory which belongs to the State.

22. The court erred in holding the said private act, approved June 28, 1895, to be constitutional and valid, because said act makes the town of Hartford, East Hartford, Glastonbury, Manchester, and South Windsor (being each a municipal corporation) a body politic and corporate, thereby making a corporation out of other corporations, and against the consent of any of them.

S. H. WILLIAMS,
Treasurer of the Town of Glastonbury,
By JOHN R. BUCK,
His Attorney.

I hereby certify that the foregoing appeal was filed on April 17, 1896, and that John R. Buck, of Hartford, is recognized in the sum of \$100, conditioned that the said S. H. Williams, treasurer, will

prosecute said appeal to effect and pay all costs therein if he shall fail so to do; and said appeal is hereby allowed.

GEORGE A. CONANT,
Assistant Clerk.

Filed April 17, 1896.

95 & 96

SUPERIOR COURT, HARTFORD COUNTY,
CLERK'S OFFICE.

The above and foregoing is a true copy of record in said superior court.

Attest:

C. W. JOHNSON, *Clerk.*

SUPREME COURT, HARTFORD COUNTY,
CLERK'S OFFICE.

The above and foregoing is a true copy of record in said supreme court.

Attest:

C. W. JOHNSON, *Clerk.*

97 At a supreme court of errors, holden at Hartford, in and for the first judicial district of the State of Connecticut, on the first Tuesday of May, in the year of our Lord one thousand eight hundred and ninety-six.

Present: Hon. Charles B. Andrews, chief justice; Hon. David Torrance, Hon. Simeon E. Baldwin, Hon. Augustus H. Fenn, Hon. William Hamersley, associate judges.

ARTHUR F. EGGLESTON, State's Attorney for the County of Hartford and State of Connecticut, *ex Rel.* Morgan G. Bulkeley, Meigs H. Whaples, John G. Root, John H. Hall, all of Hartford; James W. Cheney, of Manchester; Alembert O. Crosby, of Glastonbury; Charles W. Roberts, of East Hartford, and Lewis Sperry, of South Windsor, Commissioners for the Connecticut River Bridge and Highway District,

vs.

S. H. WILLIAMS, Treasurer of the Town of Glastonbury.

This application for a writ of mandamus came to the superior court in and for the county of Hartford, at the October term, 1895, to wit: on October 16, 1895, when an alternative writ of mandamus was issued by said superior court, commanding the respondent to pay the relators the sum of fifteen dollars as required by a certain order of the relators set forth in the application, and in all respects to obey said order and conform to the laws of this State with regard thereto or signify cause to the contrary.

98 The parties appeared and on November 25, 1895, the respondent made return to said superior court showing reasons why a peremptory writ of mandamus should not issue.

Said superior court having heard the parties upon the issues of law and fact as they appeared from the pleadings and agreed finding of facts on file, sustained the demurrers filed by the relators,

overruled the demurrers filed by the respondent, and found the issues for the relators, and that said return is insufficient, and that the allegations of the application are true, except as modified by the subsequent pleadings and by the finding of facts as on file.

Thereupon, said superior court adjudged *pro forma* that a peremptory writ of mandamus issue commanding the respondent forthwith on service thereof to pay the relators, the said Commissioners for the Connecticut River Bridge and Highway District, the sum of fifteen dollars, in accordance with the order and requisition of the relators made on September 14, 1895, and presented to the town of Glastonbury and to its treasurer on September 21, 1895, in the manner and form as said order directs, and that the respondent obey and conform in all respects to said order.

An appeal from said judgment to this court was filed and allowed on the 17th day of April, 1896. And now, said cause having been fully heard, this court doth adjudge that in the record transmitted to this court there is no error.

All which I have caused by these presents to be exemplified and the seal of the supreme court of errors of the State of Connecticut to be hereunto affixed, and do hereby certify that the within and foregoing is a true copy of said original files and record.

99 In testimony whereof I hereunto set my hand and affix the seal of said court, at Hartford, in said county and State, this 16th day of July, 1896.

[Seal Supreme Court of Errors, Con.]

CHARLES W. JOHNSON,

*Clerk of the Supreme Court of Errors for the First
Judicial District, County of Hartford, State of Connecticut.*

STATE OF CONNECTICUT, } ss:
Litchfield County, }

I, Charles B. Andrews, a judge of the supreme court of errors, of the State of Connecticut, do hereby certify that Charles W. Johnson, whose name is subscribed to the preceding exemplification, is the clerk of the said supreme court of errors, in and for said Hartford county, being the first judicial district of said State of Connecticut duly appointed and sworn; that the above is his genuine official signature, and that full faith and credit are due to his official act. I further certify that the seal affixed to the said exemplification is the seal of the supreme court of errors, and that the foregoing attestation is in due form.

Dated at Litchfield this 16 day of July, 1896.

CHARLES B. ANDREWS,
*A Judge of the Supreme Court of Errors
of the State of Connecticut.*

100 S. H. WILLIAMS, Treasurer, Plaintiff in Error,

{
vs.

ARTHUR F. EGGLESTON, State Attorney, Defendant in Error.

Assignment of Errors.

And for reasons of said writ of error to the Supreme Court of the United States, said S. H. Williams, treasurer, assigns the following:

The court erred:

1st. In holding that the contract of November 13, 1894, was not a valid contract between the State of Connecticut and the Berlin Iron Bridge Company (as set forth in paragraph 6th of respondent's return) at the time of the approval of the act of May 24th, 1895.

2nd. In holding that the temporary bridge constructed by the Berlin Iron Bridge Company, as set forth in paragraphs 7, 9, and 10 of the return was not constructed under and by virtue of the contract of November 13, 1894.

3rd. In holding that "An act concerning the Hartford bridge" approved May 24, 1895, being chapter 168 of the Public Acts of 1895, and the special act entitled "Creating the Connecticut River bridge and highway district," approved June 28, 1895, and the order and the requisition of the commissioners passed September 14, 1895, as set forth in paragraphs 12, 13 and 14 of the return, were not in violation of the Constitution of the United States nor of the 10th section of article 1 thereof or of the constitution of the State of Connecticut, and were valid and binding acts, and that all the doings and proceedings of said commissioners of the Connecticut River bridge and highway district, including the order and requisition made on the town of Glastonbury and on the respondent, as treasurer of said town, are valid and binding in law.

101 4th. In holding that said public act approved May 24,

1895, and said special act, approved June 28, 1895, and the proceedings of said commission, do not deny to the respondent and to said town of Glastonbury, of which he is treasurer, and to the citizens of said town, the equal protection of the laws and especially of sections 2665, 2666, 2667, and 2768 of the General Statutes of the State of Connecticut and also of chapter 339 of the Public Acts of the State of Connecticut approved July 9th, 1895, and do not deprive said town and the citizens thereof of the equal protection of the laws, and is not, therefore, in violation of the Constitution of the United States nor of section 1 of article 14 of the amendments thereof.

5th. In holding upon the facts as they appear upon the record, that said public and private acts, and the order and requisition of said commissioners for the Connecticut River bridge and highway district, passed and made on September 14, 1895, and all proceedings under the same were and are in accordance with the provisions of the Constitution of the United States, and of section 10 article 1 thereof, and section 1 article 14 of the amendment thereof, and were and are valid and binding under said Constitution.

6th. In holding that the act approved May 24, 1895, being Exhibit 8, in the record of said supreme court of errors, and especially the 3rd section thereof, did not impair the obligation of the contract of November 13, 1894, between the Berlin Iron Bridge Company and the State of Connecticut (Exhibit 1 annexed to defendant's return) and was not in violation of the Constitution of the United States nor of the 10th section of article 1 thereof.

7th. In holding that the whole of said act was not invalid by reason of its impairment of the obligation of said contract.

102 8th. In holding that the defendant could not make the objection to said act that it impairs the obligation of said contract.

9th. In holding that the rights of the defendant could be and were affected by transactions and agreements between the Berlin Iron Bridge Company and the State of Connecticut, entered into and made since the commencement of these proceedings and since the filing of the defendant's return, and by which the said Berlin Iron Bridge Company released its claim against said State of Connecticut on account of the contract of November 13th, 1894.

10th. In holding that said special act of June 28th, 1895, (Exhibit "B" page 73 of record of said supreme court of errors) does not deprive the town of Glastonbury nor the defendant, its treasurer, nor the citizens and inhabitants of said town, of property without due process of law, and that said act does not deny to said town, nor to the defendant as such treasurer, nor to the citizens and inhabitants of said town, the equal protection of the laws, and that said act is not in violation of the Constitution of the United States nor of section 1 of the XIVth amendment thereof.

11th. In holding that although it is the general policy of the State of Connecticut as shown by its laws enacted before and since its constitution was adopted, to leave the expense of public improvements for highway purposes to the determination of the municipal corporations within the limits of which the highways may be situated, and to charge them only with such obligations as may be incurred in their behalf by officers of their own selection, the act of May 24, 1895, (Exhibit 8 record of said supreme court of errors) and the act of June 28, 1895, (Exhibit "B" page 79 record of said supreme court of errors) are not in violation of the Constitution of the United States nor of section 1 of the XIVth amendment thereof.

103 12th. In holding that section 4 of the act approved June 28, 1895, provides any rule or standard of apportionment of the expense for the ordinary support and maintenance of said bridge or highway, except such as said commissioners may adopt, and is not in violation of the Constitution of the United States nor of section 1 of the XIVth amendment thereof.

13th. In holding that said acts of May 24, 1895, and June 28, 1895, do not violate the Constitution of the United States nor the fundamental principle of free government, that there can be no taxation without representation, although said acts provide for the taking of money by taxation from said town of Glastonbury, and

from the inhabitants thereof by said commissioners of said Connecticut River bridge and highway district, the inhabitants of said town having no voice in the appointment of said commissioners.

14th. In holding that the provisions for the issue of bonds as provided in section 4 of said special act, approved June 28, 1895, and the means provided in said special act for the collection of said bonds, constitute due process of law, and are not in violation of the Constitution of the United States nor of the 14th amendment thereof. And in holding that said act and said provisions for the issue and collection of said bonds, are valid and binding on the defendant and the town of Glastonbury, and on the citizens and tax-payers thereof and on the other towns named in said act, and that said town of Glastonbury and said other towns and the citizens thereof can be compelled to pay said bonds although under said act they have no voice in issuing them, nor in the appointment of the commissioners who are by authority of said special act, empowered to issue them, and make them binding upon said town of Glastonbury, and upon this defendant, and upon the citizens and tax-payers of said town of Glastonbury, and the citizens and tax-payers of the other towns mentioned in said act.

104 15th. In holding that the appointment of said commissioners of the Connecticut River bridge and highway district was a valid appointment.

16th. In holding that the said act approved May 24th, 1895, and the special act approved June 28th, 1895, and the proceedings of said commissioners under said acts constitute due process of law, and are not in violation of the Constitution of the United States, nor of the 14th amendment thereof, although said acts give said commissioners the right to take money from the defendant, as treasurer of the town of Glastonbury, and from the inhabitants and tax-payers of said town, for the purpose of constructing and maintaining highways and bridges outside of said town, and also give powers and privileges to said commissioners and impose duties upon them in reference to highways and bridges, and their maintenance, which powers, privileges and duties under the constitution and laws of the State of Connecticut, belong exclusively to said town of Glastonbury, and to the other towns mentioned in said act, and to the inhabitants and tax-payers thereof, (to be exercised and performed either by themselves or by officers of their own choosing,) and have exclusively belonged to said town of Glastonbury and to said other towns and to the inhabitants and tax-payers thereof, since prior to the date of the adoption of the present constitution of the State of Connecticut.

Wherefore, the said S. H. Williams, plaintiff in error, prays that the judgment of said supreme court of errors and of said superior court for Hartford county be reversed and annulled, and altogether held for nothing, and that he may be restored to all things which he has lost by occasion of said judgments.

S. H. WILLIAMS,
Treasurer, Plaintiff in Error,
By his attorney, JOHN R. BUCK.

105

Opinion.

STATE *ex Rel.* MORGAN G. BULKELEY *et al.*, Commissioners for the
Connecticut River Bridge and Highway District,
vs.
SAMUEL H. WILLIAMS, Treasurer of the Town of Glastonbury.

(Argued May 8th; decided June 25th, 1896.)

BALDWIN, J.:

The provision of suitable means of communication between the opposite banks of the Connecticut river, has been, from early colonial days, a frequent subject of legislation by the General Assembly. Numerous ferries have been set up, from time to time, at different points, by virtue of franchises conferred in some cases upon towns, and in others upon individuals; and several toll-bridges have been erected during the present century, under charters granted to private corporations.

One of these bridges took the place of an ancient ferry between the towns of Hartford and East Hartford, in which each town had a proprietary interest. The bridge company, by a voluntary settlement, paid to Hartford a satisfactory compensation for the revocation of its ferry franchise; but declined to recognize any claim of East Hartford, the original grant to which, by its express terms, was only during the pleasure of the General Assembly, and had been repealed without qualification. Litigation resulted, and this court held that no rights of East Hartford had been violated; a decision afterwards affirmed, upon proceedings in error, by the Supreme Court of the United States. In the opinion there delivered, it was held that the State, on the one hand, and the town of East Hartford, on the other, did not stand, with reference to the grant and repeal of the ferry franchise, in the attitude of parties to a contract. "The legislature," it was declared, "was acting here on the one part, and public municipal and political corporations on the other. They were acting, too, in relation to a public object, being virtually a highway across the river, over another highway up and down the river. From this standing and relation of these

106 parties, and from the subject-matter of their action, we think that the doings of the legislature as to this ferry must be considered rather as public laws than as contracts. They related to public interests. They changed as those interests demanded. The grantees likewise, the towns being mere organizations for public purposes, were liable to have their public powers, rights, and duties modified or abolished at any moment by the legislature.

"They are incorporated for public, and not private objects. They are allowed to hold privileges or property only for public purposes. The members are not shareholders, nor joint partners in any corporate estate, which they can sell or devise to others, or which can be attached or levied on for their debts.

"Hence, generally, the doings between them and the legislature are in the nature of legislation rather than compact, and subject to all the legislative conditions just named, and therefore to be considered as not violated by subsequent legislative changes.

"It is hardly possible to conceive the grounds on which a different result could be vindicated, without destroying all legislative sovereignty, and checking most legislative improvements and amendments, as well as supervision over its subordinate public bodies.

"Thus, to go a little into details, one of the highest attributes and duties of a legislature is to regulate public matters with all public bodies, no less than the community, from time to time, in the manner which the public welfare may appear to demand.

"It can neither devolve these duties permanently on other public bodies, nor permanently suspend or abandon them itself, without being usually regarded as unfaithful, and, indeed, attempting what is wholly beyond its constitutional competency.

"It is bound, also, to continue to regulate such public matters and bodies, as much as to organize them at first. Where not restrained by some constitutional provision, this power is inherent in its nature, design, and attitude; and the community possess as deep and permanent an interest in such power remaining in and being exercised by the legislature, when the public progress and welfare demand it, as individuals or corporations can, in any instance, possess, in restraining it." *East Hartford v. Hartford Bridge Co.*, 10 How., 511, 533.

In view of these principles of constitutional law, an act was passed by the General Assembly of 1887, for the purpose of 107 making this same bridge a free public highway and throwing the burden of its support on the towns which would be especially benefitted by such a change. At that time there were three toll-bridges across the Connecticut river in Hartford county. By this act, which was entitled "An act to establish free public highways across the Connecticut river in Hartford county" (Public Acts of 1887, chap. 126, p. 746), the State's attorney was directed to bring a complaint in the name of the State to the superior court for that county, against the corporations owning these bridges, for the purpose of making each of them a free public highway. Notice of the pendency of the proceeding was to be given to all towns interested, and any town might appear and become a party. Commissioners were to be appointed by the court, who should "lay out and establish highways across the Connecticut river where the toll-bridges in said county now are, and across said bridges and across and along the causeways and approaches appurtenant to and connected therewith."

The commissioners, after such notice as the court should prescribe as to those towns which they should deem interested, were to "estimate and assess the damages caused by the lay out and establishment of such free highways, and shall estimate and assess said damages upon the several towns which they shall find will be specially benefitted by the layout and establishment of said high-

ways, as benefits accruing to said several towns, in such proportion as said commissioners shall find to be equitable." Their report, if accepted by the court, was to be "final and conclusive as to all matters therein contained, and said court shall render judgment thereon against said several towns for the amount assessed against them respectively; and the clerk of said court shall forthwith notify each of said towns of the judgment against it, by mailing to the clerk thereof a notice specifying the date and amount of such judgment."

The act also contained the following provisions:

"SEC. 5. Said towns so assessed shall, within three months from the rendition of said judgment, deposit with the treasurer of this State the sums so severally assessed against them, and at the expiration of said three months the comptroller shall draw his order on the treasurer in favor of the several persons or corporations 108 in whose favor damages have been assessed for the amount of damages so assessed respectively, and said treasurer shall hold the amount thereof for the benefit and subject to the order of the several parties in whose favor said orders were drawn, and shall notify said several parties that he so holds said amounts, and thereupon said highways so laid out as aforesaid shall become and remain public highways. In case any town shall fail to pay the judgment rendered against it as aforesaid, within the time aforesaid, said court shall order execution upon said judgment to be issued against said town in favor of the State."

Each town so assessed was given, by section 6, power to issue bonds to raise the money to pay its assessment.

"SEC. 7. When said highways, so established as aforesaid, shall have become free public highways as aforesaid, the same shall thereafter be maintained by said towns so assessed in proportion to the assessment upon said towns as hereinbefore provided. The first selectmen of said several towns shall meet on the second Monday after said highways shall have become free highways as aforesaid, at the office of the selectmen in Hartford, and annually thereafter and at such other times as they shall deem necessary, and said several first selectmen shall constitute a board for the care, maintenance, and control of said highways. Said board shall appoint a chairman, secretary, and treasurer; and said board shall apportion the expense of repairing and maintaining said highways upon the said several towns in proportion to the assessment against said towns as aforesaid, and said chairman shall draw his order on the treasurer of said board for the proportional amount payable by said towns as aforesaid for such repairs and maintenance. Any damages resulting from the defective condition of said highways or the bridges upon the same, shall be paid by said towns in proportion to the said assessment. For the purpose embraced in this section said board shall be a body politic and corporate by the name of the board for the care of highways and bridges across the Connecticut river in Hartford county, and actions may be brought against said board by service upon its secretary, and any judgment recovered therein shall be paid by said towns in said proportions.

and in the same manner as herein provided for the payment of the expenses of repairs and maintenance as aforesaid. Said board shall annually report to said several towns the expenses incurred and paid by them during the preceding year."

109 By a joint resolution, approved on the same day, it was provided that this act should not affect the bridge between Windsor Locks and Warehouse Point, nor that between Suffield and Enfield.

Due proceedings were had under the act, resulting in a final judgment in 1889, establishing a free public highway across the river between Hartford and East Hartford, including the bridge and causeway of the Hartford Bridge Company, and awarding it \$210,000, damages. The court also "found that the towns of Hartford, East Hartford, Glastonbury, South Windsor, and Manchester, will be especially benefited by the layout and establishment of such free highway, and estimated and assessed said damages upon said several towns as benefits accruing to said several towns in such proportion as said commissioners found to be equitable, that is to say, as follows: To the town of Hartford ninety-five thousand (\$95,000) dollars, to the town of East Hartford sixty-six thousand (\$66,000) dollars, to the town of Glastonbury twenty-five thousand (\$25,000) dollars, to the town of South Windsor twelve thousand (\$12,000) dollars, to the town of Manchester twelve thousand (\$12,000) dollars.

Pending the action, the General Assembly in 1889 appropriated \$84,000 from the treasury of the State, for the purpose of paying forty per cent. of these damages. 10 Special Laws, p. 1321. In view of this, the judgment of the superior court concluded with an order that "the town of Glastonbury shall within three months from the date of rendition of this judgment, deposit with the treasurer of this State the sum of fifteen thousand (\$15,000) dollars, the same being sixty per cent. of the sum so assessed against it," and a like provision, with respect to the assessment against each of the other four towns, and a further order that "at the expiration of said three months from the date of the rendition of this judgment the comptroller of the State shall draw his order on the treasurer in favor of the Hartford Bridge Company for the sum of \$210,000, the same being the amount of the damages that have been so assessed in its favor, and the treasurer shall hold the amount thereof, viz: said two hundred and ten thousand (\$210,000) dollars, for the benefit and subject to the order of said Hartford Bridge Company, and shall forthwith notify said Hartford Bridge Company that he so holds said amount, and thereupon as soon as the treasurer shall give said notice said highway so laid out as aforesaid shall become and remain a public highway.

110 The treasurer of the State shall at the same time give notice to the first selectmen of each of said towns, viz: Hartford, East Hartford, Glastonbury, South Windsor, and Manchester, that said highway has become a free public highway to be thereafter maintained by said towns."

After this judgment had been fully executed, the General Assembly, in 1893, passed an act (Public Acts of 1893, chap. 239, p. 395),

declaring that the highway, which included the bridge and its approaches, should thereafter be maintained by the State at its expense, and providing for the appointment, on the nomination of the governor, of a board of three commissioners, for the care, maintenance and control of the highway, such expenses as they might incur for repairing and maintaining it to be paid from the State treasury on the order of the comptroller. All acts inconsistent therewith were repealed.

Commissioners were duly appointed under this act, who soon afterwards, the bridge having become unsafe, executed a contract in behalf of the State with the Berlin Iron Bridge Company for the erection of a new one at a cost of over \$300,000. After the company had begun the work of construction, the old bridge was accidentally destroyed by fire, and the commissioners thereupon ordered, under one of the provisions of the contract, the erection of a temporary bridge by the same company.

While it was fulfilling this order, an act was passed which was approved and took effect May 24th, 1895, (Public Acts of 1895, chap. 168, p. 530), repealing the act of 1893, and requiring the towns of Hartford, East Hartford, Glastonbury, South Windsor and Manchester thereafter to maintain the highway across the Connecticut river where the old bridge formerly was, with the proper approaches, and to erect a new bridge whenever necessary, and maintain the same, contributing to any expenses to which they might be thus subjected, "in proportion to the assessment made upon said towns by the superior court in the proceedings in which said highway was laid out and established; that is to say: Hartford, ninety-five two-hundred-and-tenths; East Hartford, sixty-six two-hundred-and-tenths; Glastonbury, twenty-five, two-hundred-and-tenths; South Windsor, twelve, two-hundred-and-tenths; Manchester, twelve two-hundred-and-tenths." Half the taxes received by the State, during the next five years, from any

111 street railway companies using the bridge, was to be paid

over to the towns in proportion to their assessments, and ten per cent. of such receipts during each succeeding year. A commission was also appointed to hear and determine all legal claims, not exceeding in all \$40,000, for contract obligations already incurred by the bridge commissioners; their decision in favor of such claimants to be final against the State, and any sums awarded by them, not exceeding \$40,000, to be paid from the State treasury. If any claimant was dissatisfied with their decision, he was at liberty to bring suit against the State in the superior court, and should the Berlin Bridge Company so sue, then whether it proved the existence of any valid contract with the bridge commissioners under the act of 1893, or not, it was to be entitled to recover for all materials furnished or expenses incurred or in connection with any contract with the commissioners, including all legal expenses. Any judgment of the court in favor of the claimant in any suit was to be paid from the State treasury. If the contract already described, between the Berlin Iron Bridge Company and the bridge commissioners, should be adjudged valid, then the comptroller

was directed to carry it out and pay the contract price; in such case the towns were not to receive half the taxes for five years, but were to receive ten per cent. of them annually, and were to remain charged with the perpetual maintenance and repair of the highway over the river, including the new bridge.

On June 28th, 1895, (Special Acts of 1895, chap. 343, p. 485), a private act was passed, entitled "An act creating the Connecticut River bridge and highway district." By this the towns of Hartford, East Hartford, Glastonbury, Manchester and South Windsor were constituted a corporation under the name of the Connecticut River bridge and highway district, "for the construction, reconstruction care, and maintenance of a free public highway across the Connecticut river at Hartford and the causeway and approaches appertaining thereto, as described in a decree of the superior court of Hartford county, passed on the tenth day of June, 1889, in which decree said highway was laid out and established." Four citizens of Hartford and one from each of the other towns were appointed "commissioners for said district, with authority to maintain said

free public highway, and whenever public safety or convenience may require, to erect new bridges along or upon said

highway, to reconstruct, raise, and widen the causeway and approaches appurtenant to or a part of said highway, at the expense of the towns named in section one of this act and composing said bridge district, at a cost not exceeding \$500,000." This board was to report annually to the several towns the expenses incurred and paid by it during the year preceding. It was authorized to issue the bonds of the district to an amount not exceeding \$500,000 to provide means for building a new bridge or improving the highway across the river. Each of the five towns, in order to meet the principal and interest due and to become due upon these bonds, was to pay over to the treasurer of the commission, on his written order, annually, twenty-five cents on each thousand dollars of its grand list, until its share of the whole had been fully satisfied, in the proportion of Hartford seventy-nine one-hundredths, East Hartford twelve one-hundredths, Glastonbury three one-hundredths, Manchester three one-hundredths, and South Windsor three one-hundredths; and for the ordinary support and maintenance of said highway each town was also directed to pay upon the orders of the commission, from time to time, such further sums as the commission might determine as its proper proportion of the total expenses under the provisions of the act, and to provide for such payments in voting its annual tax levy. Half of all taxes received by the State, during the next five years, from street railway companies using the bridge, and ten per cent. annually of all future receipts of the same character, were to be paid to the treasurer of the commission. The commissioners were given full power to construct and reconstruct all necessary bridges and approaches, and their orders were made obligatory upon the towns, and sufficient authority for the town treasurer to pay any sums to the treasurer of the commission, which the commission might direct. The courts were empowered to enforce by mandamus or otherwise, any orders of

the commissioners made under authority of the act. The commissioners under the act of 1893 were directed to turn over all property and papers in their hands to the new board. The latter was authorized to assume the cost of constructing the temporary bridge which was in course of erection under the contract made by the commissioners under the act of 1893. So much of the public act of 113 May 24th, 1895, as fixed the proportion in which each town was to contribute to the cost of constructing and maintaining the bridge and highway, was repealed.

The judgment, brought up for review by this appeal, directed the issue of a writ of peremptory mandamus, to enforce the payment by the treasurer of the town of Glastonbury of an order drawn upon him by vote of the commissioners for the Connecticut River bridge and highway district for three one-hundredths of the sum of \$500, required to meet expenses incurred by the board for the ordinary support and maintenance of the highway under their charge. In behalf of the town it is contended that it cannot thus be compelled to contribute, at the dictation of officials not of its own choosing, to the cost of maintaining a highway which is wholly outside of its territorial bounds.

It has undoubtedly been the general policy of the State to leave the expense of public improvements for highway purposes to the determination of the municipal corporations within the limits of which the highways may be situated, and to charge them only with such obligations as may be incurred in their behalf by officers of their own selection. But when the State at large or the general public have an interest in the construction or maintenance of such works, there is nothing in our Constitution, or in the principles of natural justice upon which it rests, to prevent the General Assembly from assuming the active direction of affairs by such agents as it may see fit to appoint, and apportioning whatever expenses may be incurred among such municipalities as may be found to be especially benefitted, without first stopping to ask their consent. *Norwich v. County Com'rs*, 13 Pick., 60; *Rochester v. Roberts*, 29 N. H., 360; *Philadelphia v. Field*, 55 Pa. St., 320; *Simon v. Northrup*, — Or., —; 40 Pac. Rep., 560. As against legislation of this character, American courts generally hold that no plea can be set up of a right of local self-government, implied in the nature of our institutions. *People v. Draper*, 15 N. Y., 532, 543; *People v. Flagg*, 46 N. Y., 401, 404; *Commonwealth v. Plaisted*, 148 Mass., 375; 19 Northeastern Rep., 224.

The constitution of Connecticut was ordained, as its preamble declares, by the people of Connecticut. It contemplates the existence of towns and counties, and without these the scheme of government, which it established, could not exist. It secured to these territorial subdivisions of the State certain political privileges 114 in perpetuity, and among others the election by each county of its own sheriff, and by each town of its own representatives in the General Assembly, and its own selectmen and such officers of local police as the laws might prescribe. It secured them, because it granted them; not because they previously existed. Towns have

no inherent rights. They have always been the mere creatures of the colony or the State, with such functions and such only as were conceded or recognized by law. *Webster v. Harwinton*, 32 Conn., 131. The State possesses all the powers of sovereignty, except so far as limited by the Constitution of the United States. Its executive and judicial powers are each distributed among different magistrates, elected some for counties, and some for the State at large; but its whole legislative power is vested in the General Assembly. Our constitution imposes a few, and only a few, restrictions upon its exercise, and except for these the General Assembly, in all matters pertaining to the domain of legislation, is as free and untrammeled as the people would themselves have been, had they retained the law-making power in their own hands, or as they are in adopting such constitutional amendments from time to time as they think fit. *Pratt v. Allen*, 13 Conn., 119, 125; *Booth v. Town of Woodbury*, 32 Conn., 118, 126. It has not infrequently, from early colonial days, made special provision for particular highways or bridges, and in several instances by the appointment of agencies of its own to construct or alter them at the expense of those upon whom it thought fit to cast the burden. 1 Col. Rec., 417; 5 *id.*, 80; 13 *id.*, 601; 14 *id.*, 605, 630; 1 Private Laws, 282, 285. By legislation of this nature the city of Hartford was recently compelled to contribute a large sum for a separation of grades at the Asylum Street railroad crossing, and we held the act to be not unconstitutional. *Woodruff v. Catlin*, 54 Conn., 277; *Woodruff v. N. Y. & N. E. R. R. Co.*, 59 Conn., 63, 83.

That so many laws of this general description have been enacted by the General Assembly, both before and since the adoption of our constitution, is, of itself, entitled to no small weight in determining whether they fall within the legitimate bounds of what that instrument describes as "legislative power." *Maynard v. Hill*, 125 U. S., 190, 204; *Wheeler's Appeal*, 45 Conn., 306.

One of those to which reference has been made, (I. Priv.

115 Laws, p. 285), required the town of Granby to build and maintain a bridge across the Farmington river, half of which was in the town of Windsor, and was adjudged to be valid by this court, notwithstanding then as now the general statutes provided that bridges over rivers dividing towns should be built and maintained at their joint cost. *Granby v. Thurston*, 23 Conn., 416. There is no principle of free government or rule of natural justice which demands that the support of highways and bridges shall be imposed only on those territorial subdivisions of the State in which they are situated. If it be required of them, it is only by virtue of a statute law, which the legislature can vary or repeal at pleasure. *Chidsey v. Canton*, 17 Conn., 475, 478. The burden is one that the legislature can put on such public agencies as it may deem equitable, and transfer from one to another, from time to time, as it may judge best for the public interest. *Dow v. Wakefield*, 103 Mass., 267; *Agawam v. Hampden*, 130 Mass., 528; *County of Mobile v. Kimball*, 102 U. S., 691, 703; *Washer v. Bullitt County*, 110 U. S., 558.

The defendant urges that taxation and representation are indis-

solubly connected by the underlying principles of free government, and that this, since the commission which directs the affairs of the bridge district and makes requisitions on the towns for such funds as it may deem necessary, not having been selected by them, is a sufficient defense against the payment of the order which has been drawn upon him, since it can be paid only out of the moneys raised by town taxation.

Taxes can, indeed, under our system of government, only be imposed by the free consent of those who pay them, or their representatives; and for purposes which they approve. But the inhabitants of these towns were represented in the General Assembly, by which the laws now brought in question were enacted. The legislative power, after defining the general purposes of taxation, to confer upon local public corporations the right to determine the amount of the levy within the territory under their jurisdiction, is unquestionable; and in its exercise it is immaterial whether the corporations, to which that function is entrusted, or between which it is shared, be called counties or towns, school districts or bridge districts. When

a levy is voted, the action is corporate action, deriving its ob-
116 ligatory force wholly from the authority of the State. Towns cannot tax their inhabitants for any purpose except by virtue of statute law. That law for many years required them annually to tax for moneys to be paid over to the State treasurer for State expenditures. It now requires them to tax, as occasion may require, for moneys to be paid over to the county treasurer for county expenditures. It can equally require any town or towns to tax for moneys to be paid over to the treasurer of a bridge or highway district, in which they are included, for district expenditures. Kingman *et al.*, petitioners, 153 Mass., 566, 27 Northeastern Rep., 778.

It has been suggested that in colonial times it was the right of the inhabitants of every town, themselves, to order the municipal duties assigned to them and choose the officers by whom only it could be placed under a pecuniary obligation, and that this is one of those rights and privileges "derived from our ancestors," to "define, secure and perpetuate" which our Constitution was adopted, and to which its preamble refers. If it can be said that such a right ever existed, it was not one of the nature of those which were described by the framers of the Constitution. They were speaking of rights personal to the individual, as a citizen of a free Commonwealth; civil as distinguished from political; and belonging alike to each man, woman and child among the people of Connecticut. Such of them as they deemed most essential they proceeded to specify in the declaration of rights, and here we find asserted (art. 1, sec. 2) that "all political power is inherent in the people, and all free governments are founded on their authority" and subject to such alterations in form, from time to time, "as they may think expedient." If there were any absolute right in the inhabitants of our towns to regulate their town finances and affairs which was superior to all legislative control, it would be a great "political power." It would create an *imperium in imperio*, and invest a certain class of our people—those qualified to vote in town meetings—with the

prerogative of defeating local improvements which the General Assembly deemed it necessary to construct at the expense of those most benefitted by them, under the direction of agents of the State, unless the work were done and its cost determined under town control. No set of men can lay claim to such a privilege under the constitution of Connecticut.

The defendant further insists that the act of June 28th is
117 void, because in section 4 it requires payments from the town treasuries without providing the necessary means; the authority given to raise necessary funds in the annual tax-levy being of no avail because the bridge district is not required to submit any estimate of the amount needed for the ensuing year, before the time for laying the tax. There is no substance to this objection. So far as concerns the principal and interest of any bonds that may be issued, each town is expressly directed to pay to the district annually twenty-five cents for each thousand dollars of its grand list, until enough has been thus received to satisfy its proportionate share. As to the ordinary expenses of maintenance, the commission is to draw orders on each town from time to time for such sums as it may determine as the proportion of such town under the provisions of the act. The rule for ascertaining this proportion is that previously laid down in the same section; and it is to be presumed that the commission will make such reports to each town before its annual town meeting as will enable it to lay all taxes necessary to meet its probable expenses for the succeeding year. As to those of the first year, there is nothing on the record to indicate that the share of any town could have been large enough to cause it the slightest embarrassment.

No valid exception can be taken to this rule of apportionment, according to which the expenses of the bridge district are to be distributed among the several towns.

The acts of 1895, under which the present action has arisen, both refer to and in a sense rest upon the act of 1887. That was designed to secure the perpetual maintenance of the Hartford bridge as a free highway, at the expense of those towns to which it might be found to be of especial benefit. The duty of ascertaining which towns would be thus benefited was entrusted to the superior court. It might have been undertaken by the legislature itself, but it was entirely proper to make it the subject of proceedings of a judicial character, to be instituted by the State. *Salem Turnpike & Chelsea Bridge Corporation v. County of Essex*, 100 Mass., 282. This duty was fulfilled; and since the date of the final decree in that cause, there has been and there could be no material change in any of the conditions by which it was determined. Whatever towns were

118 most benefited in 1889 by the perpetual maintenance of a free bridge, must be most benefited by it in 1895. This was purely a question of proximity. Hartford is the natural market of all the neighboring towns lying within easy driving distance. From several of these she is separated by a navigable river, which is outside of her boundaries as well as of their. Ferries had been tried as a means of communication, and found inadequate.

A toll-bridge had been established, and with the same result. The next step naturally was to provide for a free bridge. Four towns east of the river have been judicially found to derive a special benefit from this, and while the proportionate benefit accruing to each, as well as those to Hartford, may vary from time to time, with changes in population and industrial or social conditions, some benefit, and some especial benefit, to each of the group must, in the nature of things, always be felt. On this point they were fully heard before a competent tribunal, which, after due notice to every town in the State, and long consideration, selected them out of all the rest.

Complaint is made because, while by the decree of the superior court, Glastonbury was charged with twenty-five two-hundred-and-tenths of the cost of erecting and maintaining a bridge at this point, and this proportion was reaffirmed by the General Assembly, in the act of May 24th, 1895, by that of June 28th, 1895, it was cut down to three one-hundredths, and other changes made, with the result of reducing the assessment of every town except Hartford, the burden thrown upon which was largely increased.

There is no reason why the relative amount of benefits, which each of the five towns, as compared with the rest, derives from the bridge, may not vary from one period of time to another, and any such variation might present an equitable ground for making a corresponding change in its proportionate assessment for the expenses of construction or maintenance. That what was the proper share of each was determined in 1889 by a judicial proceeding did not preclude a readjustment for due cause, in 1895, by a legislative proceeding; nor did the act of May 24th, 1895, put it out of the power of the General Assembly to reconsider its action, as was, in effect, done by the act of June 28th. *Scituate v. Weymouth*, 108 Mass., 128. We are bound to presume that there was due cause for making the apportionment finally determined on, for it is certain that there might have been. A comparison of the censuses of the United States for 1880 and 1890, between which

119 dates the proceedings under the act of 1887 were brought to a conclusion, shows that while, during the intervening decade, the population of Hartford, East Hartford, and Manchester had been largely increased, that of Glastonbury and South Windsor had suffered a substantial loss. The organization of modern society is such as to foster the growth of cities and their suburbs, at the expense of country towns dependent for their prosperity on agricultural pursuits. The street railways, from the taxes paid by which the treasury of the bridge district was to be in part supplied, run from Hartford to the towns across the river, and from their inhabitants a large part of the fares collected may be derived. In view of all these matters, the General Assembly may well have concluded, when by the act of June 28th they were about to supply the necessary machinery for carrying into effect the main object of the act of May 24th, that Hartford, with its rapidly increasing business and population, ought in fairness to relieve the lesser towns

in the bridge district of part of the burden to which they were subject under previous legislation.

Nor is it of any importance that in 1893 the State had taken the maintenance of the bridge upon itself. This was merely a gratuitous act, with no element of a contract, and gave rise to no vested rights, except such as might accrue from obligations on the part of the State subsequently assumed by virtue of its provisions.

It is contended that such obligation was contracted in favor of the Berlin Iron Bridge Company, and was impaired by the legislation of 1895. If so, legislation would be so far forth invalid as against that company, under art. I, sec. 10 of the Constitution of the United States. The result would be that the contract made between it and the bridge commissioners, acting under the act of 1893, would remain in force; but not that the State could not compel the towns especially benefited by its execution to pay for the benefits received. In fact, however, the pleadings show that the bridge company, availing itself of the remedy tendered by the act of May 24th, 1895, presented its claim for breach of contract to the commission appointed to examine it, and pending this action has accepted their award, and discharged the State from all demands. This, at all events, left the towns or their representatives in no position to raise this objection on constitutional grounds. In mandamus proceedings matters occurring after the suit is brought can be properly considered in determining whether the writ shall be made peremptory.

The defendant also urges that the act of June 28th violates the XIVth amendment of the Constitution of the United States, in that it deprives the town of Glastonbury of property without due process of law and denies to it the equal protection of the laws. No right, as against the State, to the equal protection of the laws is secured to its municipal corporations by this amendment, which can limit in any way legislation to charge them with public obligations. Nor have their inhabitants, in their capacity of members of such corporations, any greater right or immunities. *New Orleans v. New Orleans Water Works Co.*, 142 U. S., 79, 93. No property of the town of Glastonbury has been or is to be taken. *Booth v. Town of Woodbury*, 32 Conn., 118, 130; *Railroad Co. v. County of Otoe*, 16 Wall., 667, 676. A duty to lay taxes for public purposes has been imposed, and for reasons already stated, it was competent to the General Assembly to create that duty, as it was created. Their proceedings were due proceedings; the process by which it is now sought to compel the defendant to pay the sum in controversy is due process. The town can find no claim, under the Constitution of the United States, any more than under that of Connecticut, to such right of local self-government as precludes the General Assembly from exacting this payment, notwithstanding the demand come from another municipal corporation, the bridge district, in choosing whose members, or directing whose affairs, it has had no share. *Giozza v. Tiernan*, 148 U. S., 657, 662.

We have spoken of the bridge district as a municipal corporation, although it may not answer the common-law definition of

that term, since not composed of the inhabitants of any territory as such. In modern times corporations, both public and private, have often been constituted by a union of other corporations. Such was the United States of America after the Declaration of Independence, and until the adoption of their present Constitution. Such are the various counties of this State, once quasi-corporations and now full corporations, the constituents of which have always been the several towns within their boundaries. The power of the bridge district over the towns composing it is no less than it would have been, had their inhabitants individually been made its members. The district and the towns are alike agencies of the State for governmental purposes and, whether they be styled public or municipal corporations, their relations to it and to each other are the same, and equally subject to modification at its pleasure.

121 The defendant having refused to pay an order lawfully drawn upon him in behalf of the bridge district, the writ was properly issued against him. There was no necessity for making the several towns or the bridge district parties defendant. The bridge district was, in effect, the relator; no town other than Glastonbury had any legal interest in the controversy; and Glastonbury itself had none in this suit, by which it was charged with no wrong, and in which the only remedy sought was one to compel the performance of a statutory duty incumbent on its treasurer, as such. The writ of mandamus must run singly to the party who is bound to do the particular act commanded. *Farrell v. King*, 41 Conn., *8, 453.

While not necessary parties, the superior court might and, no doubt, would have summoned in any or all of the five towns, or the bridge district, or admitted any of them as intervenors, had application to that effect been made; for each had a vital interest in the questions of law on which the case must turn. General Statutes, sec. 884, 887, 890. No order of this nature, however, having been sought from any quarter, their absence can furnish no ground of appeal.

There is no error in the judgment appealed from.
In this opinion Torrance and Fenn, Js., concurred.

The foregoing is a true copy of the original opinion as filed with the reporter of the court; but the opinion is subject to alteration and addition by the judges until printed in the official reports.

JAS. P. ANDREWS, *Reporter.*

122 STATE OF CONNECTICUT,
First Judicial District, County of Hartford. }

In pursuance of the command of the writ of error within, I, C. W. Johnson, clerk of the supreme court of errors of the State of Connecticut, within and for the first judicial district, and county of Hartford, in said State, herewith transmit the original writ of error, and assignment of errors and a true copy of the record of all the proceedings and judgment in said supreme court of errors, and of

the opinion thereof in the case of Arthur F. Eggleston, State's attorney, *ex rel.*, Morgan G. Bulkeley, *et al.*, commissioners for the Connecticut River bridge and highway district *v.* S. H. Williams, treasurer of the town of Glastonbury, lately pending in said supreme court of errors, under my hand and the seal of said court.

Witness my official signature, and the seal of said supreme court of errors, at the city of Hartford, in the county of Hartford, and first judicial district of the State of Connecticut, this 24th day of July, in the year of our Lord one thousand eight hundred and ninety-six.

[Seal Supreme Court of Errors, Conn.]

C. W. JOHNSON,
*Clerk of the Supreme Court of Errors of the State of
Connecticut within and for the County of
Hartford and First Judicial District.*

123 Supreme Court

S. H. WILLIAMS, Treasurer, Plaintiff,
vs.
ARTHUR F. EGGLESTON, Attorney for the State of Connecticut,
Defendant.

Stipulation Relating to Dissenting Opinion.

In the above-entitled case it is hereby stipulated by the attorneys for the parties thereto that the dissenting opinion in said case filed in the supreme court of errors of the State of Connecticut, a certified copy of which is hereto annexed and marked Exhibit "A," may be annexed to and be filed as a part of the record of the above-entitled case in the Supreme Court of the United States as if certified to said court with the original record thereof, and that an order may be entered, if the same to the court shall seem proper, in accordance with this stipulation.

Dated at Hartford, Connecticut, this 9th day of November, 1896.

JOHN R. BUCK,

Attorney for Plaintiff in Error.

LEWIS SPERRY,

Attorney for Defendant in Error.

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EXHIBIT "A."

STATE *ex Rel.* BULKELEY }
vs.
WILLIAMS, Treasurer. }

Exhibit "A."

ANDREWS, C. J. (dissenting):

I deem it clear and certain, that the duty which the act referred to authorized the relators to perform was a town duty. Nowhere

in the act are the relators made State officers and charged with State duties. But on the contrary they are spoken of as town officers set to transact town affairs. The maintenance of the highway of which the relators have the care cannot be regarded as anything other than a town duty, without imputing to the legislature the intent to inflict on these towns the monstrous injustice of making their inhabitants liable to pay the damages caused by the non-feasance or a misfeasance of a duty not imposed on them by law. The relators are totally unlike the commissioners appointed in the case of the Asylum Street railroad crossing. In that case the State, in the exercise of its sovereign authority, appointed its own officers to abate a nuisance dangerous to human life, for the existence of which the three corporations named were jointly responsible. *Woodruff vs. Catlin*, 54 Conn., 295; *Woodruff vs. N. Y. & N. E. R. Co.*, 59 Conn., 63.

The relators although appointed to transact town affairs are—six of them—not inhabitants of Glastonbury. They were not elected by the inhabitants of that town nor has that town any control over their conduct. And from so much of the opinion as holds that the order of the relators is obligatory on that town through the town treasurer, I wholly dissent.

125 It must be admitted without dispute that it would be incompetent for the legislature to engage in the performance of the affairs of a private corporation by officers of its own appointment. The legislature chartered the New York, New Haven and Hartford Railroad Company and may alter or repeal that charter at pleasure. But the legislature cannot appoint a superintendent or a general manager of the affairs of that company without its consent, for whose acts or negligence the corporation should be liable. Such an appointment, if by any possibility the legislature should ever make one, would probably be held void as not being a legislative act. But if held valid, it could only be on the ground that as the legislature might put an entire end to the existence of that corporation, it could do the same thing by piecemeal or by indirection.

The difficulty with the appointment of these commissioners is not with the power of the legislature to establish agencies for the execution of governmental functions, nor with its power to provide for the maintenance of certain public highways through the State as distinguished from municipal agencies, and for the cost of such maintenance by taxation of the inhabitants of those localities most directly interested in such maintenance. The real difficulty is with the power of the legislature, under the provisions of the State constitution, to give the whole execution and control of duties and powers assigned to towns, to persons in whose selection the towns have no agency direct or indirect, and over whose conduct they have no control.

126 It will be a surprising doctrine to the people of this State, even if only suggested, that that the Constitution by the grant of legislative power has conferred on the legislature the authority to take from them the management of their local concerns

and the choice of their own local officers. It would be hardly more surprising to them to be told that by adopting the Constitution they had granted to their own representatives the legal authority to take away their liberties altogether.

The building and repair of highways has always been one of the principal duties of a town. In Ludlow's code of 1850, it was ordered that each town should every year choose one of its inhabitants as surveyor to take care of the highways, with power to call out the persons fit for labor, for as many days as may be necessary to keep the same in repair. Subsequently the work was provided for by town taxation and the oversight committed to the selectmen who were specially charged with mending and repairing the bridges and roads used by the stage that carried the mails. From 1643 to the present time the duty and the corresponding powers in reference to the support of highways has been recognized as essentially a corporate duty belonging to the towns, to be performed by town officers. *New Haven v. Sargent*, 38 Conn., 53; *Suffield v. Hathaway*, 44 Conn., 521; and it cannot now be maintained that such burden can be imposed on towns while all the powers necessary for

their performance are committed to persons not officers or
127 agents of the town, without holding that the inhabitants of the several towns may be held responsible to the whole extent of their property for the performance of every corporate duty, without the power of selecting or controlling the persons who are charged with the performance of such duties.

The legislature has appointed the relators and has authorized them to perform a town duty respecting a highway. If the legislature may do this, it may appoint the same or other commissioners to perform any or all other town duties. There is no argument which will sustain the former which will not sustain the latter. And if this is the law—that the legislature is this State may take to itself the entire and exclusive government of a town through officers of its own appointment—then this judgment is correct; and if the legislature may not do so, then this judgment is erroneous. Stated broadly and nakedly the question in this case can be nothing short of this: Is, or is not, town government in this State a mere privilege conceded by the legislature in its discretion, and which may be withdrawn at any time at its pleasure? While the majority of the court do not assert so extreme a view, yet the argument of the majority opinion involves the theory of the existence in the legislature of this plenary and sovereign right; and unless such right exists that argument fails.

It is true that in some decisions the courts of this State have spoken of towns as possessing no inherent, original or reserved powers. But only such powers as have been delegated to them
128 and which may be regulated and controlled by the legislature. It is from these expressions that the claim is made that towns are nothing but mere agencies which the State employs for the convenience of government, clothing them from time to time with a portion of its sovereignty, but recalling the whole or any part thereof whenever the necessity or the usefulness

of the delegation is no longer apparent. In those cases where these expressions have been used, they may not have been inappropriate. In none of them was the actual exercise by the legislature of any such power the subject of the decision. Such expressions, however, are very seldom true in anything more than a general sense. They never are and, in this State, never can be literally accepted in practice. There are also cases the conclusion in which is not consistent with the existence in the legislature of the power claimed, and one in which the conclusion is antagonistic. *Farrell v. Derby*, 58 Conn., 234; *Taylor v. Danbury Public Hall*, 35 Conn., 430; *Burlington v. Schwarzman*, 52 Conn., 181.

The people of this State when they formed the present constitution, found the whole of its territory occupied by those municipal corporations called towns, each embracing all the inhabitants of a certain portion of the territory. These corporations were governed by their own inhabitants in town meetings, and their affairs were managed by officers chosen by themselves and who were always inhabitants of the town. And they provided in that instrument that

the rights and duties of all corporations should remain as if
129 the constitution had not been adopted except so far as therein
restricted or limited. Art. 10, sec. 3. They also provided,
art. 6, that electors should only be admitted from the inhabitants
of a town by the selectmen and town clerk. And by art. 3 and 4,
that meetings by the electors for the choice of State officers should
be held in the several towns and carried on by town officers. And
by art. 3, that the house of representatives should consist of repre-
sentatives from each town, being electors and residents in that town;
and that town representation should be substantially equal, and
that no town should be abolished or deprived of its representation
without its own consent. And by art. 10, sec. 2, that each town
should annually elect selectmen and such other officers of local po-
lice as the laws may prescribe.

The relation of the towns in this State to the State government is different from that in other States. Prior to the adoption of the constitution, the State government consisted mainly of an assembly of delegates from the towns; and those towns had been uniformly treated as entitled to local self-government. While it could not be said that an act of that assembly vesting the functions of a town meeting or the duties of selectmen in a commission appointed by the assembly would be unconstitutional—strictly there was in those days no constitution—yet every one familiar with our history knows that such an act would have been regarded as revolutionary and
that its passage was practically impossible.

130 This right of the inhabitants of a town to themselves order
the municipal duties assigned to the town was plainly one of
those "rights and privileges derived from our ancestors," which
the constitution was adopted "in order more effectually to define,
secure and perpetuate." By the several articles of the constitution
above mentioned, that instrument intended to make sufficient pro-
visions to that end. It did guarantee the perpetual existence of
the several towns with selectmen to manage their local affairs, and

a town clerk to record their doings at town meetings; although it left the variety and duties of the officers of the local police subject to legislative change.

In studying these parts of the constitution we should always keep in mind that the terms used had a settled meaning before it was adopted. So far as it relates to the form of administration, the constitution is, in the main, no more than a recognition and re-enactment of an accepted system. The rights preserved are ancient rights, and the municipal bodies recognized in it and required to be perpetuated were already existing with known elements and functions. And when the constitution guarantees the perpetual continuance of towns, it means towns with the same essential characteristics which towns at that time exercised; for if these essential characteristics do not remain, the town as known to the constitution does not remain. It is the town as it then actually existed with which the constitution deals.

Let us then ascertain what a town was as then existing.

131 In that way only can we give to these provisions of the constitution respecting towns, their full and true effect. The form of words by which a town corporation was created, sufficiently appears in a single instance. In the year 1779, Southington was incorporated; and the record, abbreviated, is that "upon the memorial of the inhabitants of the society of Southington, by their agents showing that * * * and praying to be incorporated into a distinct town it was:—Resolved by the assembly that the memorialists (*i. e.* the inhabitants of the territory named) with all the lands lying within the following limits and bounds * * * be and the same are hereby incorporated into a distinct and separate town with all the powers and privileges that other towns by law have and do enjoy." 2 State Records, 429. For all the general purposes of municipal administration the State was divided only into towns. And what the town was as an actual living entity is shown by the statutes then in force. Statutes of 1801, titles, towns; town meetings; town clerk; selectmen and highways. The towns are substantially the only territorial subdivisions used. Counties, as a municipal corporation or agency, did not exist. They were the mere territorial limits within which the jurisdiction of the county courts was exercised, and they were named and designated in connection with the establishment of such courts. 2 Col. Records, 35. And the courts administered the construction as well as the management of the jails and court-houses as well as the other

132 matters pertaining to the maintenance of such courts. Statutes, 1808, title gaols. Counties had no powers except such as were exercised by the courts, and no officers except those appointed by the courts, and a sheriff appointed by the General Assembly. Towns are the only subdivision mentioned in the Constitution, save that the General Assembly is required to appoint a sheriff in each county who shall serve for three years.

These statutes and rules respecting towns were a necessary result from the origin, formation, and history of the peculiar form of

government in this State. In stating this history, in order to have it as connected as possible, some slight repetition will be made.

In 1633 and 1634 a strong dissent developed in some prevailing notions of government in the infant colony of Massachusetts Bay. The opposition was strongest in the towns of Dorchester, Newtown, and Watertown. In 1631 Watertown had protested against paying a tax assessed by the board of assistants, on the ground that they could not be taxed save by their own consent. All these towns were foremost in insisting on a general government based on town representation. From these three towns, induced largely by dissatisfaction with the ecclesiastical and centralizing views of the dominant party in the bay, the pioneers of Connecticut came. By 1636 three towns or plantations were established in Connecticut and were called Dorchester, Newtown, and Watertown, but shortly after called Windsor, Hartford, and Wethersfield.

133 In March of that year the general court of Massachusetts named eight persons "to govern the people at Connecticut for the space of a year." At the end of that year the three towns on their own behalf appointed committees and magistrates who as a general court directed the affairs common to the three towns and so until Jan. 14th, 1638, 1639. At this time the essential features of town government became fixed, and have never since been changed; they were, a town meeting composed of all the inhabitants exercising all power, an executive board for the general management of town affairs—and a constable for the service of the town warrants and the conduct of the necessary physical force—all chosen by the town meeting.

The "fundamental orders" or constitution of 1639 was a combination and confederation entered into by the inhabitants and residents of Windsor, Hartford, and Wethersfield, "to associate and conjoin ourselves to be as one public State or Commonwealth" and to be "guided and governed in our civil affairs" according to such laws as shall be made in the manner provided. The orders provided that each year there should be held two general courts, composed of deputies from each town chosen by "all that are admitted inhabitants in the towns." To said general courts was committed the supreme power of the Commonwealth *i. e.* they only shall have power: (1) To make and repeal laws; (2) to grant levies for the Commonwealth; (3) to admit freemen (only those already admitted inhabitants by the towns); (4) to dispose of lands undisposed

134 of (not belonging to some particular town); (5) to discipline either towns or magistrates or any other person for any misdemeanor, and "may deal in any other matter that concerns the good of the Commonwealth."

This power, exclusive and permissive, given to the general court, developed the unlimited extent which afterwards characterized it—not so much from this (the tenth order) as from the eighth order which provided that Windsor, Hartford, and Wethersfield, should have power each town to send four of their freemen as their deputies to every general court, "which deputies should have the power of the whole town to give their votes and allowance to all such

laws and orders as may be for the public good and unto which the said towns are to be bound." The power which any one of said general courts might exercise was unlimited, but the power was that of the several towns exercised by its deputies for the purpose of binding the towns by all laws and orders made for the public good. For this purpose the inhabitants of the towns as self-governing bodies did "associate and conjoin themselves to be as one public State or Commonwealth," and did "for ourselves and our successors (*i. e.* inhabitants of each town) and such as shall be adjoined to us at any time hereafter (*i. e.* towns hereafter admitted) enter into combination and confederation together." And as a further means by which each town may protect itself against unequal treatment by the confederacy the final order prohibits the levy of any tax on the towns unless the 135 amount of the whole tax to be paid by each town is apportioned by a committee consisting of an equal number of each town. Five years later Farmington was admitted and the order provided, "they also—the inhabitants—are to have the like liberties as the other towns upon the river for making orders among themselves." 1 Col. Records, 134. About the same time Southampton on Long island was admitted. Owing to its separation by the Sound from the jurisdiction of Connecticut, and the greater difficulties of participating in the doings of the general court as well as the doubt whether its inhabitants were included among those subject to the power of the original towns, a formal combination was negotiated by which the town of Southampton as the then river towns had already done, did "by their said deputies for themselves and their successors associate and join themselves to the jurisdiction of Connecticut." 1 Col. Records, 566. In 1662 fortified by the charter of Charles II in their claim of jurisdiction, the general court admitted by simple vote the town of Southold, L. I., and the following year ordered that "Southold should have and enjoy the same privileges as Southampton doth by virtue of their combination." 1 Col. Records, 386-406.

The fundamental orders consummated the union of independent and self-governing bodies for the purpose of their own better government and of extending their jurisdiction. The combination provided for an exercise of power limited only by the fact 136 that the governing body could last only six months and must consist of deputies from each town clothed with the whole power of the town; but by the very terms of the combination each town must continue a self-governed body; and from that time on the power of local self-government was recognized as necessarily involved in the existence as well of the original towns who had associated and conjoined themselves to be as one State as of those described as such towns "as shall be adjoined to us at any time hereafter." The fundamental orders were adopted January 14th, 1638, 1639. The first general court was held in May, 1639. The second in September. There was an adjourned meeting of this court held in October. And in this the existing self-governing power of the towns was recognized. "The towns of Hartford, Windsor, and

Wethersfield, or any other of the towns within this jurisdiction shall each of them have power to dispose of their own lands undisposed of * * * as also to choose their own officers and make such orders as may be for the well ordering of their own towns being not repugnant to any law here established." 1 Col. Records, 36. That this declaration was not regarded as a law necessary to give towns power not before possessed, is certain, because if it were so such law would have been passed at the first court held in the preceding May, and which held several sessions, or the illegal acts previously passed by the towns would have been validated; because a law necessary to enable a town to exercise any power must have been approved—in Ludlow's Code adopted in 1650; and be-
137 cause if a law were necessary to enable towns to dispose of their own property, it was equally necessary to have such a law to authorize them to establish and define the duties of their principal officers. Now the office and duty of townsmen (not known as selectmen until 1691 or later) had been established in the several towns with power defined by a town vote prior to the adoption of the fundamental orders; Hartford town records, January 1st, 1638, 1639; and these votes remained unchanged except by town meetings for many years afterwards. In fact the towns, after as well as before the "constitution" of 1639, conducted by town meeting their own affairs and chose their own officers and continued so to do until the constitution of 1818. The only interruption being an edict of Sir Edmund Andros during his brief usurpation, which strictly defined the duties of selectmen and prohibited any town meeting except the necessary annual one for their choice. 3 Col. Records, 429.

In 1818 the "town" was a territorial and municipal corporation exercising the rights of local self-government through a town meeting and officers of its own choosing; it had existed with these rights from a time prior to the combination of the first towns under a joint jurisdiction. It had been continuously the main instrument by which all the operations of government were set in motion and carried on; and when the provisions of the constitution speak of "towns" they speak of that kind of a municipal corporation whose character, rights and privileges had been thus defined and settled for nearly two centuries.

138 After a struggle of more than thirty years the General Assembly yielded to the popular demand that the people have an opportunity to frame a constitution for their own government; that is, embody in one fundamental plan "their supreme, original, will in respect to the organization and perpetuation of a State government; the division and distribution of its powers; the officers by whom those powers are to be exercised and the limitations necessary to restrain the actions of each and all for the preservation of the rights, liberties and privileges of all * * * to which the legislature as well as every other branch of the Government and every officer in the performance of his duties must conform." *Opinion of the Judges*, 30 Conn., 593. For this purpose, in May, 1818, a resolution was passed recommending to the people to assemble in

their respective towns at their usual place of holding town meetings and having chosen their presiding officer, to elect as many delegates as said town now choose representatives, to meet in convention in the following August, and when so convened, if by them deemed expedient to "proceed to the formation of a constitution of civil government for the people of this State." A copy of which constitution when so formed to be transmitted by said convention forthwith to each town clerk to be by him submitted to the voters in his town assembled at such time as said convention may designate for their approbation and ratification. Said constitution "when ratified and approved by such majority of said qualified voters convened as aforesaid as shall be directed by said convention shall be and remain the 139 supreme law of the State." Journal Const. Conn., p. 6. The committee which framed this resolution, in their report, say that "from resolutions adopted in many towns and petitions of citizens in others" they can entertain no doubt of a general manifestation of a desire for "the establishment of a constitutional compact" and that the political happiness heretofore enjoyed "is to be ascribed to other causes rather than to any particular intrinsic excellence in the form and character of the government itself. Destitute of fundamental laws defining and limiting the powers of the legislature, the citizen has no security against encroachments on his most sacred rights and violations of the first principles of a free government, except what may be found in the dependence of that body on the frequency of popular elections. Yet even these boasted barriers against arbitrary power may at any time be prostrated by the legislative will." J. H. Trumbull's Notes on Const. of Conn., 43.

Upon the ratification by a majority of the people of the State, of the constitution formed by the delegates from each town appointed for that purpose in town meetings, the former government by General Assembly was finally and forever dissolved. The people in the exercise of their sovereignty established a new government in their separate and independent departments whose powers were to be exercised—and exercised only in accordance with their "supreme, original will, embodied in the constitution." As declared in its

140 preamble the main object in establishing this constitution by the people was "in order more effectually to define, secure and perpetuate the liberties, rights and privileges which they have derived from their ancestors." This purpose was accomplished, first by the declaration of certain principles of free government which were made a fundamental condition on which all powers to each department of government were granted; and second, by incorporating into the framework of the government established, such provisions as were deemed apt and necessary to preserve the most essential of their ancient privileges. Among these the one cherished above all others was the right and privilege of local self-government as represented in the towns, the town meeting and the town officers. The town was the germ from which all government in Connecticut has developed; and under the constitution, as the court has recently said, "the annual town election is the single entrance to our whole

system of State government." *O'Flaherty v. Bridgeport*, 64 Conn., 165. Through all its history it had played the most conspicuous part; with all the arbitrary power from time to time exercised by the general court the ordering of town affairs through its own officers had never been disturbed. The suppression of the town meeting was associated with tyranny under the usurpation of Andros, and its maintenance was by common consent deemed both the source and protection of that sturdy independence and respect for law which has ever characterized our people. It was to be expected that when the delegates from the towns met in convention to form a constitution that should perpetuate their ancient rights and 141 privileges, a local self-government would not fail to be secured, and so we find this principle embodied in the whole framework of the new government.

When art. 8 provided that electors should only be admitted from the inhabitants of a town and by the selectmen and town clerk of the several towns, the perpetual existence of the several towns with an executive board to manage their affairs and a town clerk to record the doings at town meetings is guaranteed. The same is true when art. 3 prohibits any meeting of the electors for the choice of State officers except in the towns and when carried on only by town officers; and the same article in providing that the house of representatives should consist of representatives from each town being electors residing in that town, and that town representation shall be substantially equal and that no town should be abolished or deprived of its representation without its consent, not only established a legislative department where the people as corporators of town corporations are represented in the lower branch and as individuals in the upper branch—but guaranteed the right and privilege in the inhabitants of each town to remain so long as they will a town corporation.

The legislature may regulate the conduct of the town corporation, may determine the local duties to be assigned to them and in that sense the towns derive their powers from the legislature—but the possession of some local duties and powers the administration of such duties by themselves or their own officers is inherent in the towns which the constitution makes the basis of the new government and the legislature has no power to destroy this town.

142 The constitution assumes the existence of towns as local municipalities and contemplates that they shall continue as they have hitherto been. It does not expressly provide that every portion of the State shall have a town organization. It names certain officers who are to be chosen by the inhabitants of the towns and confers on the inhabitants the right to choose these officers, but it does not define their duties, not in preclude the legislature from establishing new officers and giving the incumbents the general management of the municipal affairs. If therefore there are no restraints imposed upon the legislative discretion beyond those specifically stated the towns of this State might be abolished and their people subjected to the rule of commissioners appointed at the State capitol. The people of these towns might be kept in a sort of

pupilage for any period of time or to any extent the legislature might choose. And it assumes either an intention that the legislative control should be constant and absolute, or on the other hand that there are certain fundamental principles in our general framework of government which were within the contemplation of the people when they agreed upon the constitution, subject to which the delegation of authority to the several departments of government was made. That this last is the case appears too plain for serious controversy. The implied restriction upon the power of the legislature as regards local governments, though their limits may

not be as plainly defined as express provisions might have
143 made them are nevertheless equally imperative in character and whenever a question arises that is clearly within them there is no alternative but to bow to their authority.

Article tenth, in providing that each town shall annually elect selectmen and such officers of local police as the laws may prescribe, guarantees the management of town affairs by town officers of their own choice. By directing the selectmen—the more modern name for the ancient townsmen—to whom had been committed the important affairs of the town since the first settlement of the river towns—to be elected by each town annually, the direction that all officers and agents of the town shall derive their appointment from the town, is affirmed by an implication so absolute as not to be escaped—otherwise every officer and agent of the town except selectmen and the local police prescribed by law may be appointed by the legislature. The town clerk is certainly not a selectman; if he is an officer of local police he is not such an one “as the laws may prescribe;” his title comes directly from the constitution, yet no one would have the hardihood to claim that the next legislature may appoint every town clerk for a term of twenty years. The selectmen must be elected by the towns annually because they are the ordinary and permanent agents of the town and unless this provision means that all these agents must derive their authority from the town then the legislature may direct that the town duties

appertaining to selectmen as well as every function of a town
144 shall be performed by special town agents to be appointed by the legislature. I do not understand the majority of this court to justify such legislation; plainly it would be void, but it would be void only because the constitution in placing a town beyond the power of the legislature to destroy, takes under its protection the right—without which the towns of the constitution cease to be a municipal corporation and become something unknown to our laws—of self-government through its own officers and agents in all those matters included by law within its municipal powers and duties.

This right of local self-government is assured by the provisions of articles third, sixth, and tenth of the constitution; it enters into the whole framework of the government; because of its existence the continuance of the body of electors, the election of State officers, the constitution of the house of representatives were made dependent on the towns and subject to the specific provisions mentioned.

A guaranty so bulwarked should be more potent than any naked restriction. When the bill of rights forbids the taking of private property for public use without compensation it forbids the taking of such property for any but a public use, and the guarantee implied is not less sacred than the guarantee expressed.

When therefore the legislature having included within the municipal duties of Glastonbury and the four other towns named the maintenance of the highway described, it could not appoint the agents who on behalf of the town were to exercise those duties and powers.

145 "The theory of the constitution is that the several towns are of right entitled to choose whom they will have to rule over them; and that this right cannot be taken away from them and the electors and inhabitants disfranchised by any act of the legislature, or of any or all of the departments of the State government combined." *The People ex rel. Bolton v. Albutron*, 55 N. Y., 56. "Local self-government having always been a part of the American and English systems, we shall look for its recognition in any such instrument. And even if not expressly recognized it is still to be understood that all these instruments are framed with its present existence and anticipated continuance in view." Cooley, Const. Lim. (6 ed.), 47; *People v. Hurlbut*, 24 Mich., 44; *Park Com'rs v. Detroit*, 28 Mich., 228; *The People ex rel. McCagg v. Chicago*, 51 Ill., 17. "The right of local self-government cannot be taken away because all our constitutions assume its continuance as an undoubted right of the people and as an incident to Republican government." Cooley, Const. Lim. (6th ed.), 207. In the examination of American constitutional law we shall not fail to notice the care taken and the means adopted to bring the agencies by which power is to be exercised as near as possible to the subject upon which the power is to operate. In contradistinction to the governments where power is concentrated in one man, or one or more bodies of men whose supervision and active control extends to all the objects of government within the territorial limits of the State, the American system

146 is one of complete *decentralization*, the primary and vital idea of which is, that local affairs shall be managed by local authorities and general affairs only by the central authority." Cooley, Const. Lim. (6th ed.), 223; Ordrouaux Const. Legislation, 62.

This opinion has been drawn out further than was intended. The question of local self-government as an ingredient essential to constitutional administration has been set forth in the language of Judge Cooley in *The People v. Hurlbut*, 24 Mich., 44, already cited, a case in which the legislature had undertaken to appoint commissioners to govern the city of Detroit, that I quote the paragraph in full. After reviewing the history of local and municipal government in various States he said: "In view of these historical facts, and of these general principles, the question recurs whether one State constitution can be so construed as to confer upon the legislature the power to appoint for the municipalities the officers who are to manage the property, interests and rights in which their own people alone are concerned. If it can be, it involves these con-

sequences : As there is no provision requiring the legislative interference to be upon any general system, it can and may be partial and purely arbitrary. As there is nothing requiring the persons appointed to be citizens of the locality, they can and may be sent in from abroad, and it is not a remote possibility self-government of towns may make way for a government by such influences as can force themselves upon the legislative notice. As the municipal corporation will have no control,

except such as the State may voluntarily give it, as regards
147 the taxes to be levied, the buildings to be constructed, the pavements to be laid, the conveniences to be supplied, it is inevitable that parties from mere personal considerations shall seek the offices and endeavor to secure from the appointing body, whose members in general are not to feel the burden, a compensation such as would not be awarded by the people who must bear it, though the chief tie binding them to the interests of the people governed might be the salaries paid on the one side and drawn on the other. As the legislature could not be compelled to regard the local political sentiments in their choice, and would in fact be most likely to interfere where that sentiment was adverse to their own, the Government to towns might be taken to itself by the party for the time being in power, and municipal governments might easily and naturally become the spoils of party, as State and national offices unfortunately are now. All these things are not only possible, but entirely within the range of probability, if the positions assumed on behalf of the relators are tenable. It may be said that there would be more abuses of power, such as may creep in under any system of constitutional freedom. But what is constitutional freedom? Has the administration of equal laws by magistrates fairly chosen no necessary place in it? Constitutional freedom certainly does not consist in exemption from governmental interference in the citizen's private affairs; in his being unmolested in his family,

suffered to buy, sell and enjoy property and generally to seek
148 happiness in his own way, as this might be permitted by the most arbitrary ruler even though he allowed his subjects no degree of political liberty. The government of an oligarchy may be as just, as regardful of private rights and as little burdensome as any other; but if it were sought to establish such a government over our towns by law it would hardly do to call upon a protesting people to show where in the constitution the power to establish was prohibited; it would be necessary on the other hand to point out to these where and by what unguarded words the power had been conferred. Some things are too plain to be written. If this charter of State government which we call a constitution were all there was of constitutional command; if the usages, the customs, the maxims, that have sprung from the habits of life, modes of thought, methods of trying facts by the neighborhood, and mutual responsibility in neighborhood interests, the precepts which have come from the revolutions which overturned tyrannies, the sentiments of manly independence and self-control which impelled our ancestors to summon the local community to redress local evils in-

stead of relying upon king or legislature at a distance to do so—if a recognition of all these were to be stricken from the body of our constitutional law a lifeless skeleton might remain, but the living spirit, that which gives it force and attraction, which makes it valuable and draws to it the affections of the people, that which

149 distinguishes it from the numberless constitutions so called which in Europe have been set up and thrown down within

the last hundred years, many of which in their expressions have seemed equally fair and to possess equal promise with ours and have only been wanting in the support and vitality which these alone can give—this living and breathing spirit which supplies the interpretation of the words of the written charter, would be utterly lost and gone.

Mr. Justice Story has well shown that constitutional freedom means something more than liberty permitted; it consists in the civil and political rights which are absolutely guaranteed, assured and guarded; in one's liberties as a man and a citizen, his right to vote, his right to hold office, his right to worship God according to the dictates of his own conscience, his equality with all others who are his fellow-citizens; all these guarded and protected and not held at the mercy and discretion of any one man or of any popular majority. Story, *Miscellaneous Writings*, 620. If these are not now the absolute right of the people of this State they may be allowed more liberty of action and more privileges, but they are little nearer to constitutional freedom than Europe was when an imperial city sent out consuls to govern it. The men who framed our institutions have not so understood the facts. With them it has been an axiom that our system was one of checks and balances; that each department of government was a check upon the other, and each grade

150 of government upon the rest; and they have never questioned or doubted that the corporation in each municipality were

exercising their franchises under the protection of certain fundamental principles which no power in the State could override or disregard. The State may mould local institutions according to its views of policy or expediency; but local government is matter of absolute right; and the State cannot take it away. It would be the boldest mockery to speak of a city as possessing municipal liberty where the State not only shaped its government, but at discretion sent its own agents to administer it; or to call that system one of constitutional freedom under which it should be equally admissible to allow the people full control of their local affairs, or no control at all."

In this State we are not obliged to invoke the underlying principle of American constitutional law, in order to protect the inhabitants of our towns in their right to local self-government; the express provisions and necessary implications of our own Constitution plainly guarantee that right. Therefore the private act by which the legislature undertook to appoint these relators to execute the powers and perform the duties committed by the public act to the town of Glastonbury and the four other towns, as town corpora-

tions, violates a clear mandate of the Constitution, and to that extent is void.

I think there is error in the judgment of the superior court.

HAMERSLEY, J. (dissenting):

I dissent from the decision of a majority of my colleagues, and cannot but believe that a different conclusion would have 151 been reached, had it seemed to them as clear as it seems to me, that the legislation in question necessarily involves the appointment of the relators by the legislature, not as State officers but as town officers, not to perform duties directly in behalf of the State, but duties by the very terms of the statute assigned to the towns as the local municipal duties of a town corporation.

I dissent from the opinion as announced by Judge Baldwin, and concur in the opinion of Chief Justice Andrews.

The foregoing is a true copy of the original opinion as filed with the reporter of the court.

JAMES P. ANDREWS, *Reporter.*

152 STATE OF CONNECTICUT,
First Judicial District, County of Hartford. }

In pursuance of the command of the writ of error in the case of Arthur F. Eggleston, State's attorney, *ex rel.* Morgan G. Bulkeley *et al.*, commissioners for the Connecticut River bridge and highway district, *vs.* S. H. Williams, treasurer of the town of Glastonbury, I, C. W. Johnson, clerk of the supreme court of errors of the State of Connecticut, within and for the first judicial district and county of Hartford, in said State, herewith transmit a true copy of the dissenting opinion filed in said case, lately pending in said supreme court of errors, under my hand and the seal of said court, said dissenting opinion being hereunto attached, with the stipulation in reference thereto.

Witness my official signature and the seal of said supreme court of errors, at the city of Hartford, in the county of Hartford and first judicial district of the State of Connecticut, this ninth day of November, in the year of our Lord one thousand eight hundred and ninety-six.

[Seal Supreme Court of Errors, Conn.]

C. W. JOHNSON,
*Clerk of the Supreme Court of Errors of the State of
Connecticut within and for the County of
Hartford and First Judicial District.*

153 [Endorsed:] Case No. 16,349. Supreme Court U. S., October term, 1896. Term No., 570. S. H. Williams, treasurer,

&c., P. E., vs. Arthur F. Eggleston, attorney, &c. Stipulation of counsel & addition to record.

[Stamped:] Office Supreme Court U. S. Filed Nov. 10, 1896.
James H. McKenney, clerk.

Endorsed on cover: Case No. 16,349. Connecticut supreme court of errors. Term No., 570. S. H. Williams, treasurer of the town of Glastonbury, Hartford county, Connecticut, plaintiff in error, vs. Arthur F. Eggleston, attorney for the State of Connecticut. Filed July 30, 1896.

Supreme Court of the United States.

October Term, 1896.

TERM NO. 570,
CASE NO. 16,349.

S. H. WILLIAMS, Treasurer of the Town of Glastonbury,
Hartford County, State of Connecticut,

Plaintiff in Error,

vs.

ARTHUR F. EGGLESTON, Attorney for the State of
Connecticut,

Defendant in Error.

NOTICE OF MOTION TO DISMISS OR AFFIRM.

To Honorable John R. Buck, Hartford, Connecticut, Counsel
for Plaintiff in Error:

You are hereby notified that the within motion to dismiss
the writ of error or affirm the judgment in the above-entitled
case, together with the brief and argument of counsel for de-
fendant in error, annexed hereto, in support of said motion, will
be presented to the Supreme Court of the United States, on
Monday, the 26th day of April, 1897, at the convening of said
court.

LEWIS SPERRY,
GEORGE P. McLEAN,
AUSTIN BRAINARD,
Counsel for Defendant in Error.

Supreme Court of the United States.

October Term, 1896.

TERM NO. 570,

CASE NO. 16,349.

S. H. WILLLIAMS, Treasurer of the Town of Glastonbury,
Hartford County, State of Connecticut,

Plaintiff in Error,

vs.

ARTHUR F. EGGLESTON, Attorney for the State of
Connecticut,

Defendant in Error.

SERVICE OF MOTION.

I hereby acknowledge due and legal service of the within motion to dismiss the writ of error or affirm the judgment in the above-entitled case, and I also hereby acknowledge receipt of copy of said motion, together with brief and argument of counsel for defendant in error, in support of said motion.

Dated at Hartford the 1st day of April, 1897.

(Signed) JOHN R. BUCK,
Attorney for S. H. Williams, Treas..
Plaintiff in Error.

Supreme Court of the United States.

October Term, 1896.

TERM NO. 570,

CASE NO. 16,349.

S. H. WILLIAMS, Treasurer of the Town of Glastonbury,
Hartford County, State of Connecticut,

Plaintiff in Error,

vs.

ARTHUR F. EGGLESTON, Attorney for the State of
Connecticut,

Defendant in Error.

MOTION TO DISMISS OR AFFIRM.

And now comes the defendant in error in the above-entitled case, and moves the court to dismiss the writ of error therein for the following reasons:

1st. This court has no jurisdiction of the case.

2d. There is no Federal question necessarily arising on the record filed in this court, and no Federal question actually decided by the Supreme Court of Errors of the State of Connecticut, or necessarily involved in the judgment by it rendered.

3d. The allegation of two Federal questions made by the plaintiff in error, as appears of record, is not accompanied by

any allegations of fact from which this court can infer the existence of any Federal question.

4th. The question involved in the decision of the State Court related to the construction of a statute and the constitution of the State of Connecticut, both of which questions were decided adversely to the plaintiff in error.

5th. The question decided by the State court related to the power of the Legislature of Connecticut over the municipal corporation of Connecticut under the constitution of that State, as appears of record; and the decision of the court of last resort of the State of Connecticut upon that question is final, and no Federal question was involved in its decision.

Or to affirm the judgment of the Supreme Court of Errors of the State of Connecticut herein, on the ground:

1st. Although the record may show that this court has jurisdiction, it is manifest that the writ of error was taken only for delay.

2d. That although the record may show that this court has jurisdiction, the question on which the jurisdiction depends is so frivolous as not to need further argument.

3d. That although the record may show that a Federal question was decided by the State court adversely to the plaintiff in error, the record also shows that other questions not Federal in their nature were also decided adversely to the plaintiff in error; and the decision of the latter questions is sufficient to sustain the judgment of the State court.

4th. That although the record may show that a Federal question was actually decided by the State court, the decision

of a Federal question was not necessarily involved in the decision of the State court.

Dated at Hartford, Connecticut, April 1, 1897.

LEWIS SPERRY,
GEORGE P. McLEAN,
AUSTIN BRAINARD,
Counsel for Plaintiff in Error.

STATEMENT.

In the year 1887 the Hartford Bridge Company of Hartford, Connecticut, was maintaining a toll bridge across the Connecticut River at Hartford, and in connection therewith a causeway in the town of East Hartford. In that year the Legislature of the State of Connecticut passed an Act providing for the condemnation of said bridge and causeway under the law of eminent domain, with an assessment of damages to said Bridge Company for the condemnation of its property and franchises, and an award of benefits to such towns as might be found to be especially benefited. Record, page 60, Exhibit "X."

Proceedings were duly instituted pursuant to said Act for the condemnation of said bridge and causeway, and on June 10, 1889, the Superior Court for Hartford County, wherein said proceedings were pending, passed a final decree, assessing damages to the Hartford Bridge Company in the sum of two hundred and ten thousand dollars (\$210,000), and awarding said sum as benefits to five towns found to be especially benefited, to wit: Hartford, East Hartford, Glastonbury, Manchester, and South Windsor. Record, page 9, Exhibit "A."

The first selectman of each of said several five towns became, *ex officio*, a member of a board, which said board was constituted "a body politic and corporate, by the name of The Board for the Care of Highways and Bridges across the Connecticut River in Hartford County." Record, page 62, Sec. 7.

By an Act approved June 29, 1893, the Legislature provided that the State of Connecticut should thereafter maintain said bridges and highways, and provided further that the Governor should appoint three commissioners, with the consent of the Senate, which commissioners should constitute a board for the care, maintenance, and control of said bridges

and highways. (Public Acts of Connecticut, 1893, Chapter CCXXXIX, page 395.)

As this Act is not set forth in the record, we quote it in full here, as follows:

“ (Senate Bill No. 201.)

“ Chapter CCXXXIX.

“ An Act concerning the Hartford Bridge.

“ Be it enacted by the Senate and House of Representatives in General Assembly convened:

“ Section 1. The highways across the Connecticut River at Hartford, where the present bridges now are, as laid out and established in accordance with the provisions of Chapter CXXVI of the Public Acts of 1887, together with said bridges and the causeways and approaches appurtenant to and connected therewith, shall hereafter be maintained by the State of Connecticut at its expense.

“ Sec. 2. The Governor, at the present session of the General Assembly, shall appoint three commissioners, with the consent of the Senate, one for the term of two years, one for the term of four years, and one for the term of six years, who shall constitute a board for the care, maintenance, and control of said highways and bridges, and, upon the expiration of their several terms of office, their successors shall be appointed in like manner for the term of six years from the time of appointment, and the expenses of repairing and maintaining said highways and bridges shall be incurred by said board of commissioners on behalf of the State, and shall be reported by said board, from time to time, to the comptroller of the State, who shall audit all bills for the same and draw his order, or orders, for the payment thereof on the treasurer of this State, by whom said orders shall be paid from the State treasury.

“ Sec. 3. All causeways and other real estate used in connection with said bridges, or for the maintenance and protection of said causeways, shall be considered to be, under the provisions of this Act, as appurtenant to said bridges and highways across the same.

“ Sec. 4. All acts and parts of acts inconsistent herewith are hereby repealed.

“ Approved June 29, 1893.”

Under this Act three commissioners were appointed, as therein provided, two of whom, George W. Fowler and Charles W. Roberts, under date of November 13, 1894, and by amendment under date of Jan. 14, 1895, executed a pretended contract in behalf of the State of Connecticut, party of the first part, and The Berlin Iron Bridge Company, party of the second part, for the construction of a new iron bridge in lieu of the old wooden bridge then standing, at a total cost of upwards of three hundred thousand dollars. Record, pp. 23-36, inclusive, Exhibit "I."

By Act approved May 24, 1895, the Legislature of the State of Connecticut repealed the Act of 1893, Chapter CCXXXIX, above referred to, and further provided that said five towns of Hartford, East Hartford, Glastonbury, Manchester, and South Windsor, should thereafter maintain said bridge and causeway. Record, p. 57, Exhibit "8."

Section 3 of said Act, approved May 24, 1895, provided that Hon. Dwight Loomis of Hartford and the comptroller and treasurer of the State should constitute a committee to hear and determine any legal claims, not to exceed forty thousand dollars, which might be presented within six months after the passage of said Act, arising under or by virtue of said contract with any party, and particularly with The Berlin Iron Bridge Company.

Section 4 provided that

"If any such party or parties, particularly The Berlin Iron Bridge Company, shall not be satisfied with the decision of said commission, permission and authority is hereby given to such party or parties, particularly the said The Berlin Iron Bridge Company, at any time within three years from and after the passage of this Act, to commence and prosecute a suit or suits against the State of Connecticut, in the Superior Court for Hartford County, for any legal claim, debt, or demand arising under or by virtue of any valid contract made

and executed by said commission under and by the provisions of said Public Act of 1893, acting within the legal scope of their authority, with any party, and particularly with the said The Berlin Iron Bridge Company, or for the construction of any contract with said commissioners alleged by said plaintiff to be valid and binding upon the State of Connecticut, according to the ordinary procedure in civil actions in the State; and in any event, whether said contract shall be held valid or not, said The Berlin Iron Bridge Company shall be entitled to recover for all material furnished, and all expenses of every kind actually incurred under, in relation to, or in connection with said contract, including therein all legal and personal expenses."

Record, pp. 58, 59.

Section 8 of said Act provides as follows:

"If any contract for the building of a bridge over the Connecticut River, between the towns of Hartford and East Hartford, alleged to have been made by said commissioners with The Berlin Iron Bridge Company, shall be declared valid and binding, upon any complaint brought for its construction as hereinbefore provided, then the comptroller is authorized and directed to carry out and complete said contract, according to the provisions thereof, and to employ a competent engineer to supervise the construction of such bridge, and to draw his order or orders upon the State treasurer for the same and for said cost of supervision; but nothing in this Act shall be construed as relieving the said towns of Hartford, East Hartford, Glastonbury, South Windsor, and Manchester, upon the passage of this Act, from the duty of maintaining and repairing the present and all other necessary bridges, causeways, and appurtenances, across said river, between said towns, or rebuilding, whenever necessary, such new bridge as may, under the provision of this section, be erected by the State. In case such new bridge shall be constructed at the expense of the State, as provided for in this section, the provision for the payment to said five towns of fifty per cent. of the taxes from street

railway companies using such new bridge annually for five years, shall not take effect, but ten per cent. of all such taxes shall annually be paid by the treasurer of the State, upon the order of the comptroller, to the treasurer of said towns, in proportion to the assessments made upon said towns, respectively, as aforesaid." Record, p. 59.

The Berlin Iron Bridge Company presented its claim to said commission, provided for under the Act of May 24, 1895, above referred to, and said commission awarded said Bridge Company, under date of December 7, 1895, twenty-seven thousand five hundred and twenty-six dollars (\$27,526). Record, p. 50, Exhibit "9."

Under date of December 13, 1895, the directors of The Berlin Iron Bridge Company voted to accept said award so made by said commission in full of all claims and demands which it had against the State of Connecticut on account of said alleged contract, and voted to surrender said alleged contract to the State of Connecticut, and authorized Charles M. Jarvis, president of said company, to sign all necessary receipts, releases, and discharges. Record, p. 51, Ex. "10"; also p. 49.

Under date of December 13, 1895, The Berlin Iron Bridge Company received from the State of Connecticut said sum of twenty-seven thousand five hundred and twenty-six dollars (\$27,526), and gave its receipt therefor, and surrendered said alleged contract to the State. Record, p. 52, Ex. "11;" also p. 49.

Record, page 50, Exhibit "9," Award of Commissioners to The Berlin Iron Bridge Company.

Record, page 51, Exhibit "10," Vote of Directors of The Berlin Iron Bridge Company to Accept Award of Commissioners.

Record, page 52, Exhibit "11," Release of The Berlin Iron Bridge Company to the State of Connecticut.

On May 17, 1895, said bridge was totally destroyed by fire. Record, p. 48.

By an Act approved June 28, 1895, the Legislature created said five towns of Hartford, East Hartford, Glastonbury, Manchester, and South Windsor a body politic and corporate, with power to sue and be sued under the name of the Connecticut River Bridge and Highway District, for the construction, reconstruction, care, and maintenance of a free public highway across the Connecticut River at Hartford, and the causeways and approaches appurtenant thereto, as described in the decree of the Superior Court for Hartford County, passed on the 10th day of June, 1889. Record, p. 52, Ex. "B."

By the second section of said Act, the Legislature appointed eight commissioners for said district; four from Hartford and one from each of the other towns in said district, with power to erect a new bridge along and upon said highway, to construct, raise, and widen the causeways and approaches appurtenant thereto, or a part of said highway, at the expense of said towns, at a cost not exceeding five hundred thousand dollars (\$500,000).

It provided that vacancies in the Board of Commissioners should be filled by vote of the towns represented either in annual or special town meeting.

The Commissioners were authorized by Section Four of said Act that in order to raise means for the construction of a new bridge, or for the permanent improvement of said causeways and approaches, said commissioners might issue bonds to an amount not exceeding five hundred thousand dollars (\$500,000).

Section Four of said Act provided that for the ordinary support and maintenance of said highway, said towns shall from time to time, upon the order of said Commissioners, pay such

further sums as said commissioners may determine, as the proportion of said towns under the provisions of this resolution, and said towns were authorized and directed to provide for such payments in the annual tax levy of said town.

By Section Seven of said Act it is provided that the orders of the said Commissioners shall be obligatory upon the several towns constituting said district, and such orders are made sufficient authority for the treasurer of each of said towns to pay to said Commissioners, or their treasurer, any sum required to be paid by the towns named in said order. And it is further provided in Section Seven that the orders of the Commissioners might be enforced in any court of competent jurisdiction by mandamus, or otherwise. Record, pp. 52 to 57, Ex. "B."

The Commissioners of the Connecticut River Bridge and Highway District, having expended five hundred dollars (\$500) for the ordinary support and maintenance of said highway, passed a resolution, under date of September 14, 1895, apportioning the amount due from the several towns constituting said district, under the provisions of the Act approved June 28, 1895, and the amount so ascertained to be due from the treasurer of the town of Glastonbury, plaintiff in error, was fifteen dollars (\$15). Record, p. 13, Exhibit "C."

Pursuant to said resolution, said Commissioners drew an order on the treasurer of the town of Glastonbury, plaintiff in error, and made demand for the payment of the same, and payment was refused. Record, p. 14.

Thereupon, said Commissioners, under date of October 16, 1895, presented a motion to the Honorable Superior Court for Hartford County, for an alternative writ of mandamus against said Williams, treasurer of said town of Glastonbury, which said motion was allowed by said court. Record, pp. 4 to 8, inclusive.

Plaintiff in error answered to said alternative writ of mandamus that by the Public Acts of 1893, Chapter 239, the State of Connecticut had assumed the cost of maintenance of said bridge and highway (Record, p. 15), and that the State of Connecticut had entered into a contract with The Berlin Iron Bridge Company for the construction of a bridge at the point in question (Record, p. 16); that the Act of the General Assembly of Connecticut, approved May 24, 1895, repealing the Act approved June 29, 1893, under which the State of Connecticut had assumed the expense of maintenance of said bridge and the causeways appurtenant thereto, and further providing for the liquidation or execution of said contract, if such it was, was in violation of the Constitution of the United States, Section Ten, Article One, because it impaired the obligation of said alleged contract (Record, p. 18); and that the order of the Commissioners drawn upon the plaintiff in error, treasurer as aforesaid, for said sum of fifteen dollars (\$15), was in violation of the Constitution of the United States, Section Ten, Article One, thereof; that said Act approved May 24, 1895, and the order of said Commissioners, dated September 14, 1895, was in violation of the Constitution of the State of Connecticut, Sections One and Eleven of the first Article thereof; that said bridge and highway are wholly outside of the limits of the town of Glastonbury (Record, p. 18); and that to require said town of Glastonbury to contribute to the maintenance of said bridge and causeways was in violation of the Constitution of the United States, particularly Article Fourteen of the amendments thereof.

The Commissioners, defendants in error, replied, admitting the execution of said alleged contract, but denied that said alleged contract was, in fact, a valid contract, or in any way binding upon the State of Connecticut, and denied that the Commissioners appointed under the Act of 1893, Chapter 239, had power to bind the State of Connecticut by said pretended contract (Record, pp. 37, 38); and further replied that

said alleged contract had been discharged, liquidated, and surrendered by said Berlin Iron Bridge Company to the State of Connecticut (Record, pp. 37, 38, 39); and further alleged that the liability of the town of Glastonbury to contribute to the maintenance of said bridge and highway had been judicially determined and adjudged by the decree of the Superior Court for Hartford County, June 10, 1889 (Record, pp. 40, 41); and that it had been finally adjudged and determined by said decree that said town of Glastonbury was especially benefited by the layout and establishment of said highway as set forth in said decree (Record, pp. 41, 42).

The alternative writ of mandamus was issued October 16, 1895. (Record, p. 6.)

The defendant made return to the alternative writ of mandamus November 25, 1895. (Record, pp. 15 to 22, inclusive.) In this return the defendant set up the alleged contract between the State of Connecticut and The Berlin Iron Bridge Company as a part of his defense.

The relators replied to this defense under date of January 27, 1896 (Record, pp. 37-43, inclusive), and alleged in their reply that "the alleged contract between the State of Connecticut and The Berlin Iron Bridge Company, referred to as Exhibit "I," in paragraph 6 of the defendant's return, has since the filing of said return by the defendant been discharged, canceled, and surrendered to the State of Connecticut by The Berlin Iron Bridge Company; and the State of Connecticut has been released and discharged by the said The Berlin Iron Bridge Company from any and all obligations and claims of every name and nature which existed at the time of said release or might thereafter exist under or by virtue of said alleged contract." (Record, p. 38, paragraph 13.)

The relators, defendants in error, also denied the validity of this pretended contract for the reasons as set forth at length in paragraph 14. (Record, p. 39.)

The respondent below in his rejoinder to relators' reply demurred to this reply, among other reasons, "because the rights of this respondent as they existed under the laws of the State of Connecticut, and of the United States, at the date of the commencement of this action, cannot be altered or varied by any transactions, agreements, or arrangements between the State of Connecticut and The Berlin Iron Bridge Company, since the date of the commencement of this action and of the respondent's return." (Record, p. 44.)

The trial court below overruled the demurrers filed by respondent. Judgment file, Record, p. 47.

The Supreme Court of Connecticut affirmed the judgment of the trial court and held that "in mandamus proceedings matters occurring after the suit is brought can be properly considered in determining whether the writ shall be made peremptory." (Record, p. 83.)

On April 10, 1896, the Superior Court for Hartford County, wherein said matter was pending, passed judgment, *pro forma*, in favor of the relators, defendants in error. (Record, p. 47.)

From that judgment the respondent, plaintiff in error, appealed to the Supreme Court of Errors of the State of Connecticut, to the term thereof holden in Hartford on the first Tuesday of May, 1896, and assigned his several reasons of appeal. (Record, pp. 63 to 66, inclusive.)

A majority of the Supreme Court of Errors of the State of Connecticut affirmed the judgment below as appears at length by the opinion of the majority of the court. (Record, pp. 72 to 85, inclusive.) See also State, ex rel. Bulkeley et al., vs. Williams, Treasurer, 68 Conn., 131.

Upon that judgment plaintiff in error brings his writ of error and makes assignment of errors as follows:

"The Court erred:

"1st. In holding that the contract of November 13, 1894, was not a valid contract between the State of Connecticut and The Berlin Iron Bridge Company (as set forth in paragraph sixth of respondent's return), at the time of the approval of the Act of May 24, 1895.

"2d. In holding that the temporary bridge constructed by The Berlin Iron Bridge Company, as set forth in paragraphs 7, 9, and 10 of the return, was not constructed under and by virtue of the contract of November 13, 1894.

"3d. In holding that 'An Act concerning the Hartford Bridge,' approved May 24, 1895, being chapter 168 of the Public Acts of 1895, and the Special Act, entitled 'Creating the Connecticut River Bridge and Highway District,' approved June 28, 1895, and the order and the requisition of the Commissioners passed September 14, 1895, as set forth in paragraphs 12, 13, and 14 of the return, were not in violation of the Constitution of the United States, nor of the 10th Section of Article One thereof, or of the Constitution of the State of Connecticut, and were valid and binding acts, and that all the doings and proceedings of said Commissioners of the Connecticut River Bridge and Highway District, including the order and requisition made on the town of Glastonbury and on the respondent, as treasurer of said town, are valid and binding in law.

"4th. In holding that said Public Act, approved May 24, 1895, and said Special Act, approved June 28, 1895, and the proceedings of said Commission, do not deny to the respondent and to said town of Glastonbury, of which he is treasurer, and to the citizens of said town, the equal protection of the laws, and especially of Sections 2665, 2666, 2667, and 2768 of the General Statutes of the State of Connecticut; and also Chapter 339 of the Public Acts of the State of Connecticut, approved July 9, 1895, and do not deprive said town and the citizens thereof of the equal protection of the laws, and is not, therefore, in violation of the Constitution of the United States, nor of Section One of Article 14 of the Amendments thereof.

"5th. In holding upon the facts as they appear upon the record, that said Public and Private Acts, and the order and requisition of said Commissioners for the Connecticut River Bridge and Highway District, passed and made on September 14, 1895, and all proceedings under the same were and are in accordance with the provisions of the Constitution of the United States, and of Section 10, Article One thereof, and Section 1, Article 14 of the Amendment thereof, and were and are valid and binding under said Constitution.

"6th. In holding that the Act approved May 24, 1895, being Exhibit "8" in the record of said Supreme Court of Errors, and especially the third section thereof, did not impair the obligation of the contract of November 13, 1894, between The Berlin Iron Bridge Company and the State of Connecticut (Exhibit "I," annexed to defendant's return), and was not in violation of the Constitution of the United States, nor of the 10th Section of Article 1 thereof.

"7th. In holding that the whole of said Act was not invalid by reason of its impairment of the obligation of said contract.

"8th. In holding that the defendant could not make the objection to said Act that it impairs the obligation of said contract.

"9th. In holding that the rights of the defendant could be and were affected by transactions and agreements between The Berlin Iron Bridge Company and the State of Connecticut, entered into and made since the commencement of these proceedings, and since the filing of the defendant's return, and by which the said Berlin Iron Bridge Company released its claim against said State of Connecticut on account of the contract of November 13, 1894.

"10th. In holding that said Special Act of June 28, 1895 (Exhibit 'B,' p. 73 of Record of said Supreme Court of Errors), does not deprive the town of Glastonbury nor the defendant, its treasurer, nor the citizens and inhabitants of said town, of property without due process of law, and that said Act does not

deny to said town, nor to the defendant as such treasurer, nor to the citizens and inhabitants of said town, the equal protection of the laws, and that said Act is not in violation of the Constitution of the United States nor of Section 1 of the XIVth Amendment thereof.

" 11th. In holding that although it is the general policy of the State of Connecticut, as shown by its laws enacted before and since its Constitution was adopted, to leave the expense of public improvements for highway purposes to the determination of the municipal corporations within the limits of which the highways may be situated, and to charge them only with such obligations as may be incurred in their behalf by officers of their own selection, the Act of May 24, 1895 (Exhibit '8,' Record of said Supreme Court of Errors), and the Act of June 28, 1895 (Exhibit 'B,' p. 79, Record of said Supreme Court of Errors), are not in violation of the Constitution of the United States nor of Section 1 of the XIVth Amendment thereof.

" 12th. In holding that Section 4 of the Act approved June 28, 1895, provides that any rule or standard of apportionment of the expense for the ordinary support and maintenance of said bridge or highway, except such as said Commissioners may adopt, and is not in violation of the Constitution of the United States nor of Section 1 of the XIVth Amendment thereof.

" 13th. In holding that said Acts of May 24, 1895, and June 28, 1895, do not violate the Constitution of the United States nor the fundamental principle of free government, that there can be taxation without representation, although said Acts provide for the taking of money by taxation from said town of Glastonbury, and from the inhabitants thereof by said Commissioners of said Connecticut River Bridge and Highway District, the inhabitants of said town having no voice in the appointment of said Commissioners.

" 14th. In holding that the provisions for the issue of bonds as provided in Section 4 of said Special Act, approved June 28, 1895, and the means provided in said Special Act for the collection of said bonds constitute due process of law, and are not in violation of the Constitution of the United States nor of the XIVth

amendment thereof. And in holding that said Act and said provisions for the issue and collection of said bonds, are valid and binding on the defendant and the town of Glastonbury, and on the citizens and taxpay-
ers thereof, and on the other towns named in said Act, and that said town of Glastonbury and said other towns and the citizens thereof can be compelled to pay said bonds, although under said Act they have no voice in issuing them, nor in the appointment of the Commissioners who are by authority of said Special Act em-
powered to issue them, and make them binding upon said town of Glastonbury, and upon this defendant, and upon the citizens and taxpayers of said town of Glastonbury, and the citizens and taxpayers of the other towns mentioned in said Act.

" 15th. In holding that the appointment of said Commissioners of the Connecticut River Bridge and Highway District was a valid appointment.

" 16th. In holding that the said Act approved May 24, 1895, and the Special Act approved June 28, 1895, and the proceedings of said Commissioners under said Acts constitute due process of law, and are not in violation of the Constitution of the United States, nor of the XIVth Amendment thereof, although said Acts give said Commissioners the right to take money from the defendant, as treasurer of the town of Glaston-
bury, and from the inhabitants and taxpayers of said town, for the purpose of constructing and maintaining highways and bridges outside of said town, and also give powers and privileges to said Commissioners and impose duties upon them in reference to highways and bridges, and their maintenance, which powers, privi-
leges and duties, under the Constitution and laws of the State of Connecticut, belong exclusively to said town of Glastonbury, and to the other towns mentioned in said Act, and to the inhabitants and taxpayers thereof (to be exercised and performed either by them-
selves or by officers of their own choosing), and have exclusively belonged to said town of Glastonbury and to said other towns, and to the inhabitants and tax-
payers thereof, since prior to the date of the adoption of the present Constitution of the State of Connecticut.

"Wherefore, the said S. H. Williams, plaintiff in error, prays that the judgment of said Supreme Court of Errors and of said Superior Court for Hartford County be reversed, and annulled, and altogether held for nothing, and that he may be restored to all things which he has lost by occasion of said judgments." (Record, pp. 69-71, inclusive.)

AUTHORITIES.

In Connecticut, towns are territorial subdivisions of the State, created at the will of the Legislature for the more convenient administration of local, public, and governmental affairs. Towns as such have no inherent rights or powers. Their duties, powers, and obligations are such as the Legislature may from time to time prescribe. The Constitution of Connecticut contains no limitations upon the powers of the Legislature in respect to the governmental duties, powers, and obligations which it may assign towns. The will of the Legislature is supreme.

Chidsey vs. Town of Canton, 17 Conn., 475; Town of Granby vs. Thurston, 23 Conn., 416; Abendroth vs. Town of Greenwich, 29 Conn., 362; Borough of Stonington vs. States, 31 Conn., 214; Webster vs. Town of Harwinton, 32 Conn., 131; State ex rel. Coe vs. Fyler, 48 Conn., 158; Turney vs. Town of Bridgeport, 55 Conn., 414; Dailey vs. City of New Haven, 60 Conn., 320; Town of East Hartford vs. Hartford Bridge Co., 10 How., 511.

Where it appears by the record that the judgment of the State court might have been based either upon a law which would raise a question of repugnancy to the Constitution, laws, or treaties of the United States, or upon some other independent ground; and it appears that the court did, in fact, base its judgment on such independent ground, and not on the law raising the Federal question, this court will not take jurisdiction of the case, even though it might think the position of the State court an unsound one.

In order to give this court jurisdiction of a writ of error to a State court, it must appear affirmatively, not only that a Federal question was presented for decision to the highest court of the State having jurisdiction, but that its decision was necessary to the determination of the cause, and that it was actually decided, or that the judgment as rendered could not have been given without deciding it.

It is likewise settled law that, where the record discloses that if a question has been raised and decided adversely to a party claiming the benefit of a provision of the Constitution or laws of the United States, another question, not Federal, has been also raised and decided against such party, and the decision of the latter question is sufficient, notwithstanding the Federal question, to sustain the judgment, this court will not review the judgment.

Klinger vs. Missouri, 13 Wall., 257-263; Brown vs. Atwell, 92 U. S., 327; Beer Co. vs. Massachusetts, 97 U. S., 25; Citizens' Bank vs. Board of Equalization, 98 U. S., 140; Chouteau vs. Gibson, 111 U. S., 200; Adams County vs. Burlington & Missouri Railroad, 112 U. S., 123; Detroit City Railway Co. vs. Guthard, 114 U. S., 133; New Orleans Water Works Co. vs. Louisiana Sugar Refining Co., 125 U. S., 18; De Saussure vs. Gaillard, 127 U. S., 216; Wood vs. Skinner, 139 U. S., 293; Hammond vs. Johnson, 142 U. S., 73; New Orleans vs. New Orleans Water Works Co., 142 U. S., 79; Haley vs. Breeze, 144 U. S., 130; Eustis vs. Bolles, 150 U. S., 361; California Powder Works vs. Davis, 151 U. S., 389; N. Y. & N. E. R. R. Co. vs. Bristol, 151 U. S., 556; N. Y. & N. E. R. R. Co. vs. Woodruff, 153 U. S., 689; Fort Smith Ry. Co. vs. Merriam, 156 U. S., 478; Wailes vs. Smith, 157 U. S., 271; Central Land Co. vs. Laidley, 159 U. S., 103; Lambert vs. Barrett, 159 U. S., 660; Bartlett vs. Lockwood, 160 U. S., 357; Fallbrook Irrigation District vs. Bradley, 164 U. S., 112; Fowler vs. Lamson, 164 U. S., 252; Egan vs. Hart, 165 U. S., 188; Adams Ex. Co. vs. Ohio State Auditor, 165 U. S., 194.

The plaintiff in error has adopted a new name for the case at bar. It is the same case officially reported as follows:

State, ex rel. Morgan G. Bulkeley et al., vs. Samuel H. Williams, Treasurer, 68 Conn., 131.

ARGUMENT.

The assignment of errors is voluminous, but we think that it may be fairly reduced to two simple propositions:

First. The plaintiff in error claims that the Public Act approved May 24, 1895 (Record, page 57, Ex. "8") deprives the town of Glastonbury of its property without due process of law, in violation of the Constitution of the United States, Section 1, Article XIV of the amendment thereof, and

Second. The plaintiff in error claims that said Act approved May 24, 1895, and particularly Section 3d thereof, impairs the obligation of the alleged contract between The Berlin Iron Bridge Company and the State of Connecticut; and is, therefore, in violation of the Constitution of the United States, Section 10, Article I.

To the first assignment of error as abbreviated there are two substantial objections:

In the first place said statute does not deprive the town of Glastonbury of its property without due process of law; and

In the second place, if it did, the Act dealing simply with the public duty of a public corporation, it would not be in violation of the Constitution of the United States.

It appears distinctly upon the record that neither the town of Glastonbury nor its inhabitants are deprived of property. The statute places upon the town the obligation of contributing ratably to the maintenance of a public work, to wit: a public bridge and highway; and the town of Glastonbury is authorized to levy a tax for the amount which the town is required to contribute. It is a local tax; and the sum required of the town of Glastonbury is commensurate with the especial benefit resulting to that town, as judicially ascertained.

Said bridge and highway were first condemned under the provisions of the Act approved May 19, 1887 (Record, page 60, Exhibit "X"), and under that Act full hearing was had in a court of competent jurisdiction; and on the 10th of June, 1889, the trial court in the State of Connecticut passed a final decree assessing to the town of Glastonbury especial benefits, and fixing the proportion which the town of Glastonbury, with others, was to contribute towards the maintenance of said bridge and highway (Record, page 9, Exhibit "A").

The Act approved June 28, 1895 (Record, page 52, Exhibit "B"), under which these proceedings were instituted in the State court, also fixes the proportionate amount which the town of Glastonbury is required to contribute to the total expense for the construction and maintenance of said public bridge and highway, and it also provides a manner of enforcing that obligation in any court of competent jurisdiction, so that the town of Glastonbury has had its day in court under the Act of 1887, when the obligation was first placed upon that town as an especial benefit, and under the later Act pursuant to which these proceedings were instituted.

It cannot be said, then, that the town of Glastonbury has been deprived of its property without due process of law or has been denied the equal protection of the laws; but even if it were so the Constitution of the United States would not be violated.

The matter in question is strictly a police matter, which belongs exclusively to the jurisdiction of the State. The power of the Connecticut Legislature over the municipal corporations of the State is supreme, and whatever duty the Legislature should see fit to place upon a township for the maintenance of any public work, the judgment of the Legislature would be final. No Federal question is involved, and

the Federal Courts will not assume jurisdiction, or in any manner interpose between a State Legislature and a municipal corporation under such circumstances.

This Court held in *Davidson vs. New Orleans*, 96 U. S., 104, 105.

"That whenever by the laws of a State, or by State authority, a tax, assessment, servitude, or other burden is imposed upon property for the public use, whether it be for the whole State or of some more limited portion of the community, and those laws provide for a mode of confirming or contesting the charge thus imposed, in the ordinary courts of justice, with such notice to the person, or such proceeding in regard to the property as is appropriate to the nature of the case, the judgment in such proceedings cannot be said to deprive the owner of his property without due process of law, however obnoxious it may be to other objections.

"It may violate some provision of the State Constitution against unequal taxation; but the Federal Constitution imposes no restraints on the States in that regard. If private property be taken for public uses without just compensation, it must be remembered that, when the fourteenth amendment was adopted, the provision on that subject, in immediate juxtaposition in the fifth amendment with the one we are construing, was left out, and this was taken. It may possibly violate some of those principles of general constitutional law, of which we could take jurisdiction if we were sitting in review of a Circuit Court of the United States, as we were in *Lean Association vs. Topeka* (20 Wall., 655). But however this may be, or under whatever other clause of the Federal Constitution we may review the case, it is not possible to hold that a party has, without due process of law, been deprived of his property, when, as regards the issues affecting it, he has, by the laws of the State, a fair trial in a court of justice, according to the modes of proceeding applicable to such a case. This was clearly stated by this Court, speaking by the Chief Justice, in *Kennard vs.*

Morgan (92 U. S., 480), and, in substance, repeated at the present term, in McMillan vs. Anderson (95 id., 37)."

The public work in question is one in which it was peculiarly the duty of the State of Connecticut to provide for under some form of legislation.

The State might have assumed the expense itself, or assigned the burden to the county or to the towns of Hartford and East Hartford, or either one of them; or it might have created a Bridge and Highway District embracing towns especially benefited.

These are merely matters of detail, and so long as the parties interested have an opportunity to be heard in the ordinary course of civil procedure in the State, there is no Federal question involved.

That point was decided in Davidson vs. New Orleans, 96 U. S., already quoted. Justice Miller in giving the opinion of the Court in that case (pages 99, 100), speaks as follows:

"The objections raised in the State courts to the assessment were numerous and varied, including constitutional objections to the statute under which the assessment was made, and alleged departures from the requirements of the statute itself. And although counsel for the plaintiff in error concede, in the first sentence of their brief, that the only Federal question is, whether the judgment is not in violation of that provision of the Constitution which declares that 'no State shall deprive any person of life, liberty, or property without due process of law,' the argument seems to suppose that this court can correct any other error which may be found in the Record.

"1. It is said that the legislature had no right to organize a private corporation to do the work, and, by statute, to fix the price at which the work should be done.

- " 2. That the price so fixed is exorbitant.
- " 3. That there may be a surplus collected under the assessment beyond what is needed for the work, which must in that event go into the city treasury.

" Can it be necessary to say, that if the work was one which the State had authority to do, and to pay for it by assessments on the property interested, that on such questions of method and detail as these, the exercise of the power is not regulated or controlled by the Constitution of the United States?"

In the very recent case of the Fallbrook Irrigation District vs. Bradley, 164 U. S., 112, this Court reaffirmed the principle laid down in Davidson vs. New Orleans, above quoted.

The payments required of the several towns making up the Connecticut River Bridge and Highway District are provided for in the statute under which this action was brought in the State Court. (Record, page 53.)

The statute reads as follows:

" Said towns are hereby authorized and directed to provide for such payments in the annual tax levy of said towns." (Record, page 53, See, 4.)

" And said commissioners are authorized to apply to any court of competent jurisdiction, whether of State or the United States, for, and in any matter appertaining to said work, and to procure the enforcement and execution of their orders, and the courts of this State are hereby fully empowered, upon proper proceedings brought by, or at, the instance of said commissioners or any interested party, to enforce by mandamus or otherwise, the orders of said commissioners, made under authority of this resolution." (Record, page 55, See, 7.)

It must be remembered in this connection that the obligation imposed upon the town of Glastonbury had already been judicially determined under the decree of June 10, 1889, as already referred to.

The court of last resort in the State of Connecticut has declared this statute constitutional, and the obligation binding upon the town of Glastonbury, a municipal corporation of that State.

It is declared by this Court in Fallbrook Irrigation District vs. Bradley, 164 U. S., 154—a case appealed from the United States Circuit Court—that “in exercising that jurisdiction it is nevertheless the duty of the trial court to follow, and be guided by decisions of the highest State court upon the construction of the statute, and upon the question whether as construed the statute violated any provisions of the State Constitution.”

It is evident that the Supreme Court of the State did not consider that the Record presented any question as to due process of law, or equal protection of the laws under the Federal Constitution.

The language of the State court upon that point is as follows:

“The defendant also urges that the Act of June 28th violates the XIV amendment of the Constitution of the United States, in that it deprives the town of Glastonbury of property, without due process of law, and denies to it the equal protection of the laws. No right, as against the State, to the equal protection of the laws is secured to its municipal corporations by this amendment, which can limit in any way legislation to charge them with public obligations. Nor have their inhabitants, in their capacity of members of such corporations, any greater right or immunities. New Orleans vs. New Orleans Water Works Co., 142 U. S., 79, 93. No property of the town of Glastonbury has been or is to be taken. Booth vs. Town of Woodbury, 32 Conn., 118, 130; Railroad Co. vs. County of Otoe, 16 Wall., 667, 676. A duty to lay taxes for public purposes has been imposed, and for reasons already stated, it was competent to the General Assembly to create

that duty, as it was created. Their proceedings were due proceedings; the process by which it is now sought to compel the defendant to pay the sum in controversy is due process. The town can find no claim, under the Constitution of the United States, any more than under that of Connecticut, to such right of local self-government as precludes the General Assembly from exacting this payment, notwithstanding the demand come from another municipal corporation, the Bridge District, in choosing whose members, or directing whose affairs, it has had no share. *Giozza vs. Tiernan*, 148 U. S., 657, 662." (Record, page 83.)

When parties have been fully heard in the regular course of judicial procedure, they cannot say that they have been deprived of their property without due process of law within the meaning of the Federal Constitution.

Justice Gray in giving the opinion of the court in the case of *Central Land Company vs. Laidley*, 159 U. S., on page 112 says:

" When the parties have been fully heard in the regular course of judicial proceedings, an erroneous decision of a State court does not deprive the unsuccessful party of his property without due process of law, within the Fourteenth Amendment of the Constitution of the United States. *Walker vs. Sauvinet*, 92 U. S., 90; *Head vs. Amoskeag Co.*, 113 U. S., 9, 26; *Morley vs. Lake Shore Railroad*, 146 U. S., 162, 171; *Bergmann vs. Backer*, 157 U. S., 655.

It would seem, therefore, that "due process of law" was amply provided for by the statute in question, as that principle has always been interpreted by this Honorable Court, and as the same is interpreted by the court of last resort in the State of Connecticut.

As to the second assignment of error, as abbreviated, under which the plaintiff in error claims that the statute approved

May 24, 1895, (Exhibit 8, Record, page 57) violates the obligations of the alleged contract, it may be truly said:

First—That the obligations of said alleged contract have not been violated;

Second — That the obligations of said alleged contract have been paid; and

* Third — That there never was any valid contract.

The first section of said Act repeals the Act of 1893, under which the State assumed the expense of maintaining said bridge and causeway. (Record, page 57.)

The second section reimposes upon the five towns the obligation of maintaining said bridge and causeway in the proportion fixed by the decree of June 10, 1889.

The remaining sections of said Act, wherein said alleged contract is referred to, not only does not violate its obligations, but is very careful to protect them. It preserves the obligations of the alleged contract to The Berlin Iron Bridge Company in three distinct ways:

First — By raising up a special tribunal, where the claims of The Berlin Iron Bridge Company could be heard speedily and without expense of litigation;

Second — By providing that The Berlin Iron Bridge Company might bring suit against the State to recover damages not exceeding forty thousand dollars (\$40,000) where "said suit or suits shall be commenced by complaint, as by law prescribed in civil actions." (Record, page 59, See, 5.)

Third — The Berlin Iron Bridge Company might institute a suit for the purpose of testing the validity of said contract, and if found valid by the court, "then the Comptroller is

authorized and directed to carry out and complete said contract according to the provisions thereof, and to employ a competent engineer to supervise the construction of said bridge; and to draw his order or orders upon the State Treasurer for the same and for said cost of supervision." (Record, page 59, Sec. 8.)

The validity of said alleged contract was denied by the regulators (Record, page 38, paragraphs 5, 6, and 7), and it is evident by the language of the statute in question approved May 24, 1895, that the Legislature did not recognize said alleged contract as a valid and binding contract upon the State, notwithstanding which, for the good name and honor of the State, the Legislature provided that the State might be subject to suit for damage by The Berlin Iron Bridge Company; "and in any event whether said contract shall be valid or not, said The Berlin Iron Bridge Company shall be entitled to recover for all material furnished, and all expense of every kind actually incurred under, in relation to, or in connection with said contract, including therein all legal and personal expenses." (Record, page 58, Sec. 4.)

It appears of record also that The Berlin Iron Bridge Company accepted the provisions made in Section 3 of the Act, page 58 of the Record, and in consideration of the sum of twenty-seven thousand five hundred and twenty-six dollars (\$27,526) paid by the State, the company in fact surrendered said contract to the State and gave a receipt in full for all its obligations. (Exhibits "9," "10," and "11." Record, pages 50, 51, and 52.)

It is true that this release and surrender of the contract was subsequent to the commencement of these proceedings in the State court, and the plaintiff in error has alleged in his ninth assignment of errors (Record, page 70) that the court erred "in holding that the rights of the defendant could be and were

affected by the transactions and agreements between The Berlin Iron Bridge Company and the State of Connecticut, entered into, and made, since the commencement of these proceedings and since the filing of the defendant's return; and by which The Berlin Iron Bridge Company released its claim against the said State of Connecticut on account of the contract of November 13, 1894."

This assignment of error refers simply to a matter of pleading in the State court. The Supreme Court of the State decided that:

"In mandamus proceedings matters occurring after the suit is brought can be properly considered in determining whether the writ shall be made peremptory." (Record page 83.) That decision is, of course, final:

"The State court held, however, the pleadings sufficient to permit of the examination and determination of the point on which its decision turned, and that conclusion involved no Federal question." (Grand Rapids and Indiana Railroad Company vs. Butler, 159 U. S., 91.)

It is difficult to conceive of a legal fiction or a poetic license so extravagant as to give color to the claim that the statute referred to violates the obligations of the alleged contract.

Not only it is true that the statute in question does not violate the obligations of the contract, but the plaintiff in error, or town of Glastonbury, was not a party to the alleged contract and is not in position in the record to make any claim of the kind. The plaintiff in error set up the alleged contract in defense in the State court. It is evident, however, that that part of the defense was irrelevant and is not properly a part of the record.

It would have been better pleading, perhaps, if the relators had demurred to that part of the respondent's return in the

State court which counted upon the contract in question; but if the relators had done so they would have admitted for the purposes of the demurrer that said contract was, in fact, a valid contract binding upon the State, and that it was, in fact, outstanding and still in force; whereas, the fact was that the State did not recognize said contract as a valid and binding contract, as shown by the language of the statute now under consideration; and the alleged contract had in fact been liquidated and surrendered.

The relators, therefore, preferred to state the fact correctly upon the record, rather than rely upon a question of law under an assumed statement of fact, which was not in fact true.

An inspection of the record fails to disclose any violation of Article I, Section 10 of the Constitution of the United States. No such question was decided by the State Court. The Supreme Court of the State disposed of that point as follows:

"Nor is it of any importance that in 1893 the State had taken the maintenance of the bridge upon itself. This was merely a gratuitous act with no element of a contract, and gave rise to no vested rights except such as might accrue from obligations on the part of the State, subsequently assumed by virtue of its provisions.

"It is contended that such obligation was contracted in favor of The Berlin Iron Bridge Company, and was impaired by the legislation of 1895. If so, legislation would be so far forth invalid as against that company, under Art. I, Sec. 10 of the Constitution of the United States. The result would be that the contract made between it and the Bridge Commissioners, acting under the Act of 1893, would remain in force; but not that the State could not compel the towns especially benefited by its execution to pay for the benefits received. In fact, however, the pleadings show that the Bridge Company, availing itself of the remedy tendered by the Act of May 24, 1895, presented its claim for breach of contract to the commission appointed to

examine it, and pending this action has accepted their award, and discharged the State from all demands. This, at all events, left the towns or their representatives in no position to raise this objection on constitutional grounds." (Record, page 83.)

It appears, therefore, that the claim of the plaintiff in error that the obligations of said contract have been impaired in violation of Article I, Section 10 of the Constitution of the United States has nothing in the record to stand upon. It appears of record that the Act in question does not violate the obligations of the alleged contract. It further appears of record that the plaintiff in error, or the town of Glastonbury, was not in position to raise the point in any event; and it further appears of record, that the alleged contract had been liquidated and surrendered to the State before this case was decided in the trial court; and the judgment of the trial court thereon has been affirmed by the Supreme Court of the State.

It is not sufficient for the plaintiff in error to claim that the decision of the State court has violated the provisions of the Federal Constitution. The Record should show at least color of ground for such claim, in order to give this court jurisdiction.

"We do not think it necessary to narrowly inquire whether the record formally discloses that the respondents relied upon and pleaded rights under the Constitution of the United States, because we are of opinion that even if it be conceded that the respondents did, in form, invoke the provisions of the Federal Constitution, yet that no Federal question was really raised. The bare averment in the answers of supposed infringements in the proceedings of rights possessed by the respondents under the Constitution of the United States will not alone suffice. As was said in *New Orleans vs. New Orleans Waterworks*, 142 U. S., 79: 'While there is in the . . . answer of the city a formal averment that the ordinance impaired the ob-

ligation of a contract arising out of the Act of 1877, which entitled the city to a supply of water free from charge, the bare averment of a Federal question is not, in all cases, sufficient. It must not be wholly without foundation. There must be at least color of ground for such averment, otherwise a Federal question might be set up in almost any case, and the jurisdiction of this Court invoked simply for the purpose of delay.' And in Hamlin vs. Western Land Company, 147 U. S., 531, 532, where the foregoing opinion was quoted with approval, it was said: 'A real and not a fictitious Federal question is essential to the jurisdiction of this Court over the judgments of State Courts.' " (Fort Smith Railway vs. Merriam, 156 U. S., 483.)

The decision of the State court rests distinctly upon the ground that under the Constitution of Connecticut, the Legislature could exercise such powers over the municipal corporations of the State as it, in fact, did exercise under the statute in question.

We quote from the opinion of the State Court as follows: (Record, pages 78 and 79.)

"The constitution of Connecticut was ordained, as its preamble declares, by the people of Connecticut. It contemplates the existence of towns and counties, and without these the scheme of government, which it established, could not exist. It secured to these territorial subdivisions of the State certain political privileges in perpetuity, and among others the election by each county of its own sheriff, and by each town of its own representatives in the General Assembly, and its own selectmen and such officers of local police as the laws might prescribe. It secured them, because it granted them; not because they previously existed. Towns have no inherent rights. They have always been the mere creatures of the colony or the State, with such functions and such only as were conceded or recognized by law. Webster vs. Harwinton, 32 Conn.,

131. The State possesses all the powers of sovereignty, except so far as limited by the Constitution of the United States. Its executive and judicial powers are each distributed among different magistrates, elected some for counties, and some for the State at large; but its whole legislative power is vested in the General Assembly. Our constitution imposes a few, and only a few, restrictions upon its exercise, and except for these the General Assembly, in all matters pertaining to the domain of legislation, is as free and untrammeled as the people would themselves have been had they retained the law-making power in their own hands, or as they are in adopting such constitutional amendments from time to time as they think fit. *Pratt vs. Allen*, 13 Conn., 119, 125; *Booth vs. Town of Woodbury*, 32 Conn., 118, 126. It has not infrequently, from early colonial days, made special provision for particular highways or bridges, and in several instances by the appointment of agencies of its own to construct or alter them at the expense of those upon whom it thought fit to cast the burden. 1 Col. Rec., 417; 5 id., 80; 13 id., 601; 14 id., 605, 630; 1 Private Laws, 282, 285. By legislation of this nature the city of Hartford was recently compelled to contribute a large sum for a separation of grades at the Asylum Street railroad crossing, and we held the Act to be not unconstitutional. *Woodruff vs. Catlin*, 54 Conn., 277; *Woodruff vs. N. Y. & N. E. R. R. Co.*, 59 Conn., 63, 83.

"That so many laws of this general description have been enacted by the General Assembly, both before and since the adoption of our Constitution is, of itself, entitled to no small weight in determining whether they fall within the legitimate bounds of what that instrument describes as 'legislative power.' *Maynard vs. Hill*, 125 U. S., 190, 204; *Wheeler's Appeal*, 45 Conn., 306.

"One of those to which reference has been made (I. Private Laws, p. 285) required the town of Granby to build and maintain a bridge across the Farmington River, half of which was in the town of Windsor, and was adjudged to be valid by this court, notwithstanding

then as now the General Statutes provided that bridges over rivers dividing towns should be built and maintained at their joint cost. *Granby vs. Thurston*, 23 Conn., 416. There is no principle of free government or rule of natural justice which demands that the support of highways and bridges shall be imposed only on those territorial subdivisions of the State in which they are situated. If it be required of them, it is only by virtue of a statute law, which the legislature can vary or repeal at pleasure. *Chidsey vs. Canton*, 17 Conn., 475, 478. The burden is one that the legislature can put on such public agencies as it may deem equitable, and transfer from one to another, from time to time, as it may judge best for the public interest. *Dow vs. Wakefield*, 103 Mass., 267; *Agawam vs. Hampden*, 130 Mass., 528; *County of Mobile vs. Kimball*, 102 U. S., 691, 703; *Washer vs. Bulitt County*, 110 U. S., 558."

But even if a Federal question was decided by the State court, this court would not assume jurisdiction unless it clearly appeared that a decision of the Federal question was necessary to the disposal of the case in the State court.

"It thus appears that in point of fact the Supreme Court of the State of South Carolina, in its opinion in this case, passed upon the Federal question sought to be raised by the plaintiff as the foundation of his case, and decided it adversely to him; but the analysis of the case which we have made shows clearly that the decision of that question was not necessary to the judgment. Before reaching that question, the Supreme Court had already decided that the action of the plaintiff could not be sustained, according to the meaning of the provisions of the statute under which it was brought. The decision of that point was final, and was fatal to the plaintiff's right of recovery. That question is not a Federal question; it does not arise under the Constitution of the United States, or of any law or treaty made in pursuance thereof. It is not a question, therefore, which, under this writ of error, we have a right to review.

We are not authorized to inquire into the grounds and reasons upon which the Supreme Court proceeded in its construction of that statute. It is a State statute conferring certain rights upon suitors choosing to avail themselves of its provisions upon certain conditions in certain cases. Who may sue under it, and when, and under what circumstances, are questions for the exclusive determination of the State tribunals, whose judgment thereon is not subject to review by this court. It was competent for the State of South Carolina either to grant or withhold the right to bring suits against the officers of the State for the recovery of money alleged to have been illegally exacted and wrongfully paid. If granted, the action is in substance, though not in name, an action against the State itself, just as an action permitted by the acts of Congress on the subject against a collector of customs for the recovery of duties alleged to have been illegally exacted and paid under protest, is an action against the United States, though nominally against the collector. In such cases, as the State may withhold all remedy, it may attach to the remedy it actually gives whatever conditions and limitations it chooses; and its own interpretation and application of its statutes on that subject, given by its own judicial tribunals, are conclusive upon the parties seeking the benefit of them. No right secured by the Constitution of the United States to any citizen is affected by them unless they are framed or administered so as, in some particular case, to deprive the party of his property without due process of law, or to deprive him of the equal protection of the laws. No such question is or can be made in reference to the statute of South Carolina under consideration. It authorizes, in certain enumerated cases, parties found to be within its terms to bring a prescribed action against the State in the name of one of its officers. According to the decision of its highest tribunal, the plaintiff in this action is not within the class entitled to sue. To review that judgment is not within the province of this court, because it does not deny or injuriously affect any right claimed by the plaintiff under the Constitution or laws of the United States." De Saussure vs. Gillard, 127 U. S., 216, 232, 233.

In the following case the writ of error was dismissed for want of jurisdiction. The question arose upon the construction of a statute relating to insolvency in the State of Massachusetts by the Supreme Court of that State. Justice Shiras, in giving the opinion of the court, says:

"It is settled law that, to give this court jurisdiction of a writ of error to a State court, it must appear affirmatively, not only that a Federal question was presented for decision by the State court, but that its decision was necessary to the determination of the cause, and that it was actually decided adversely to the party claiming a right under the Federal Laws or Constitution, or that the judgment as rendered could not have been given without deciding it. *Murdock vs. Memphis*, 20 Wall., 590; *Cook County vs. Calumet & Chicago Canal Co.*, 138 U. S., 635.

"It is likewise settled law that, where the record discloses that if a question has been raised and decided adversely to a party claiming the benefit of a provision of the Constitution or laws of the United States, another question, not Federal, has been also raised and decided against such party, and the decision of the latter question is sufficient, notwithstanding the Federal question, to sustain the judgment, this court will not review the judgment."

Eustis vs. Bolles, 150 U. S., 366.

We think it may be fairly said that no Federal question appears upon the record. The plaintiff in error attempted to raise two Federal questions which were disposed of in the decision of the Supreme Court of the State, by saying that those questions did not exist. The opinion of the State court was confined for the most part to the construction of the statute in question under the Constitution of the State of Connecticut. The decision can be sustained on those grounds, and without reference to the Federal questions which plaintiff in error attempted to raise.

There was a dissenting opinion filed by Chief Justice Andrews, concurred in by Justice Hamersley, but the dissenting opinion, like the opinion of the court, travels upon the lines of the State Constitution. The dissenting opinion does not deny the constitutional power of the Legislature of Connecticut to provide for the maintenance of said bridge and causeway, nor its power to require the towns especially benefited to maintain said bridge and causeway, nor its power to authorize the towns to levy taxes for its maintenance, nor its power to create a bridge and highway district, with commissioners charged with the duty of executing the law, but dissents from the opinion of the court simply upon the ground that the Commissioners representing the towns benefited should have been elected by the towns in the first instance, rather than appointed by the Legislature.

The dissenting opinion opens as follows (Record, p. 85):

"I deem it clear and certain that the duty which the Act referred to authorized the relators to perform, was a town duty. Nowhere in the Act are the relators made State officers and charged with State duties; but, on the contrary, they are spoken of as town officers, set to transact town affairs. The maintenance of the highway of which the relators have the care, cannot be regarded as anything other than a town duty, without imputing to the Legislature the intent to inflict on these towns the monstrous injustice of making their inhabitants liable to pay the damages caused by the non-feasance or a misfeasance of a duty not imposed on them by law. The relators are totally unlike the commissioners appointed in the case of the Asylum Street railroad crossing. In that case, the State, in the exercise of its sovereign authority, appointed its own officers to abate a nuisance dangerous to human life, for the existence of which the three corporations named were jointly responsible.

Woodruff vs. Catlin, 54 Conn., 277, 295; Woodruff
vs. N. Y. & N. E. R. R. Co., 59 id., 63.



Supreme Court of Errors

FIRST JUDICIAL DISTRICT,

May Term, 1896.

STATE ex rel. COMMISSIONERS FOR THE CON-
NECTICUT RIVER BRIDGE AND
HIGHWAY DISTRICT

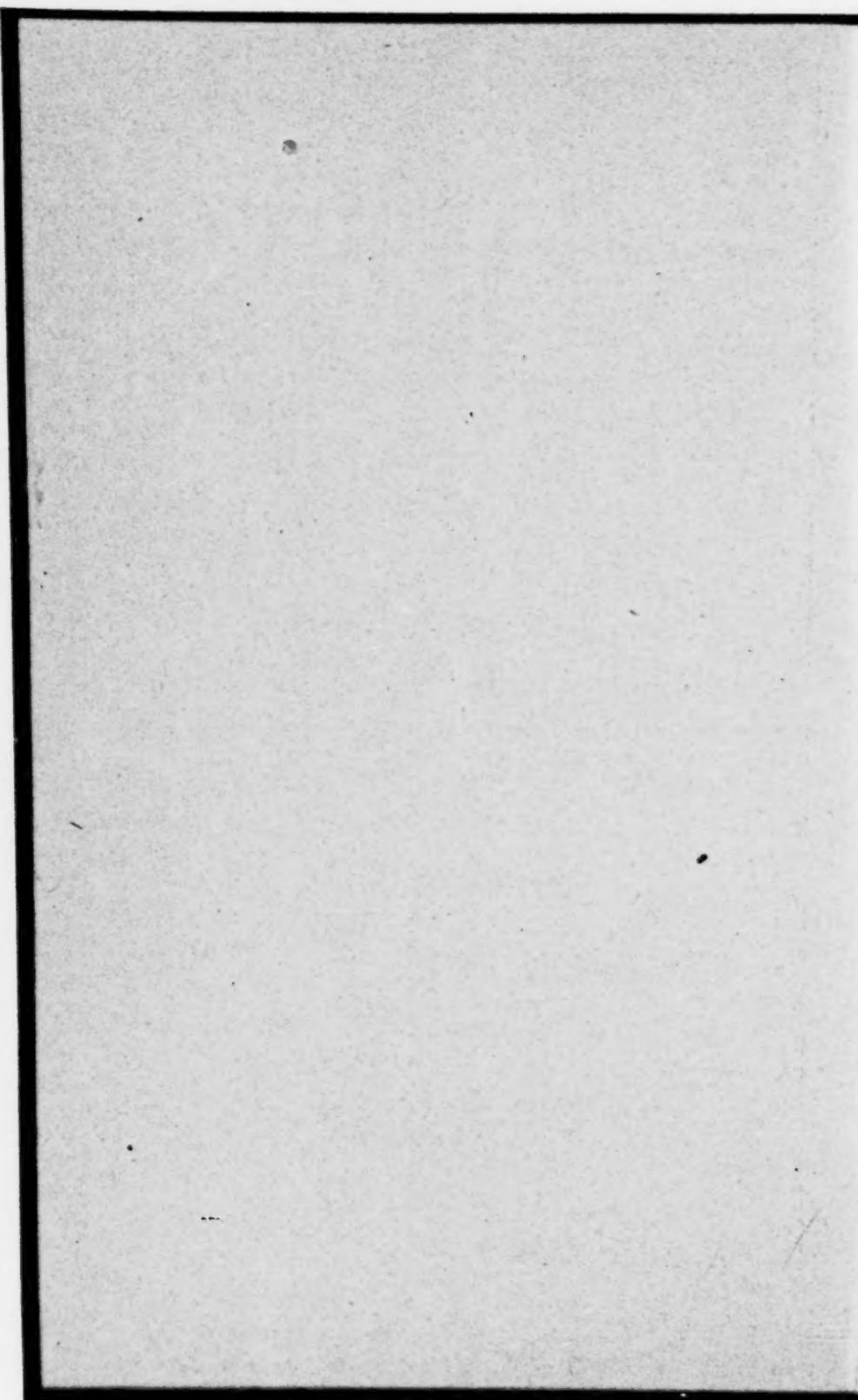
VS.

S. H. WILLIAMS,
Treasurer of the Town of Glastonbury.

Brief for Relators.

SPERRY, MCLEAN & BRAINARD,
Counsel.

HARTFORD, CONN.:
PRESS OF THE CASE, LOCKWOOD & BRAINARD COMPANY.
1896.



"The relators, although appointed to transact town affairs, are — six of them — not inhabitants of Glastonbury. They were not elected by the inhabitants of that town, nor has that town any control over their conduct. And from so much of the opinion as holds that the order of the relators is obligatory on that town through the town treasurer, I wholly dissent."

The Chief Justice, after discussing at length the peculiarity of town government in Connecticut under the Connecticut Constitution, closes as follows:

"In this State we are not obliged to invoke the underlying principle of American constitutional law in order to protect the inhabitants of our towns in their right to local self-government; the express provisions and necessary implications of our own Constitution plainly guarantee that right. Therefore, the Private Act, by which the Legislature undertook to appoint these relators to execute the powers and perform the duties committed by the Public Act to the town of Glastonbury and the four other towns, as town corporations, violates a clear mandate of the Constitution, and to that extent is void." (Record, p. 98.)

IN CONCLUSION.

It seems clear to the counsel for defendant in error that no Federal question was raised in the Record for the following reasons:

1st. No property of the town of Glastonbury is, in fact, taken without due process of law, nor is the town of Glastonbury denied the equal protection of the laws in violation of Section One, Article Fourteen, of the Federal Constitution. The only obligation imposed upon the town of Glastonbury is the statutory obligation of contributing to the maintenance of a free public bridge and highway, in respect to which that town has been found to be especially benefited under the decree of the Superior Court for Hartford County, June 10,

1889, pursuant to the Public Act of 1887. Record, p. 9, Exhibit "A."

2d. No property of the town of Glastonbury is, in fact, taken. The town is merely required to provide funds for that purpose in its annual tax levy.

3d. The town of Glastonbury has had the equal protection of the laws in its opportunity to be heard under the ordinary forms of civil procedure, in the courts of the State under the Act of 1887, as well as under the Act of May 24, 1895, upon which these proceedings were instituted in the State Court.

4th. The object of the statute in question is to provide for the maintenance of a public work which the State of Connecticut, in its sovereign capacity, is morally bound to provide for. The town of Glastonbury is a municipal corporation existing under the Constitution and laws of Connecticut, with such limited, governmental powers and duties as the Legislature of Connecticut may assign to it. The Federal Constitution cannot be invoked under such circumstances to control the legislative action of the sovereign State of Connecticut.

5th. The obligations of an alleged contract have not been impaired in violation of Section Seven, Article One, of the Federal Constitution, because it does not appear that said alleged contract was a valid and binding contract upon the State of Connecticut.

6th. It appears that the obligations of said alleged contract were carefully protected under the Act in question. The obligations of said alleged contract were fully discharged by the State, and said alleged contract surrendered to the State previous to the judgment in the trial court.

7th. The town of Glastonbury was not a party to said al-

leged contract, and cannot be heard in court, either to enforce its obligations, or complain of its violation.

We confidently believe, therefore, for the reasons above stated, and upon the authorities above quoted, that this Honorable Court will not so construe the Constitution of the United States as to set a limit to the powers of the Legislature of the State of Connecticut over the municipal corporations of Connecticut in respect to public improvements, in view of the fact that the Constitution of Connecticut fixes no limits, and the court of last resort of Connecticut has decided that the statute in question is constitutional.

We respectfully submit, therefore, that the writ of error should be dismissed for want of jurisdiction, because it does not appear that any Federal question necessarily arises upon the record, or was actually decided by the State court, or if it appears of record that a Federal question is so presented as to give this court jurisdiction, then the question on which the jurisdiction depends is so frivolous as not to need further argument.

We do not care to say more on the pending motion to dismiss or affirm. The case was argued at length in the State court, but, as we understood it at that time, the point chiefly in issue was the power of the Legislature of Connecticut under the Constitution of that State to create a taxing district, and to assign to it the duty of maintaining the public improvement referred to. We submitted to the State court a long list of authorities upon that point. Those authorities are applicable, collaterally at least, to the motion to dismiss or affirm pending here, and clearly present the controlling issue discussed before and decided by the State court. Thinking this Honorable Court might wish to examine that question, as presented to the Supreme Court of Connecticut, we have taken the liberty of attaching to our brief in support of the motion now

pending the brief used in argument in this case before the State court. An examination of the authorities there collated will show that the manner of providing for the prosecution of this public improvement by the State of Connecticut under the statute in question is similar to the manner adopted in like cases in many of the States, and wherever the question has arisen, it has been uniformly held both by the State and Federal Courts that the discretion of the Legislature in such matters cannot be controlled either by the Constitution of the State or by the Constitution of the United States.

LEWIS SPERRY,
GEORGE P. McLEAN,
AUSTIN BRAINARD,

Counsel for Defendant in Error.

Hartford, April 1, 1897.

State of Connecticut.

Supreme Court of Errors,

FIRST JUDICIAL DISTRICT.

May Term, 1896.

STATE *ex rel.* COMMISSIONERS FOR THE CONNECTICUT RIVER BRIDGE AND HIGHWAY DISTRICT

v.s.

**S. H. WILLIAMS,
TREASURER OF THE TOWN OF GLASTONBURY.**

Brief for Relators.

STATEMENT OF THE CASE.

Chapter 239 of the Public Acts of 1895 and Chapter 343 of the Private Acts of 1895 make it the duty of the towns of Hartford, East Hartford, South Windsor, Manchester, and Glastonbury to construct, reconstruct, care for, and maintain "a free public highway across the Connecticut River at Hartford and the causeways and approaches appurtenant thereto, as described in a decree of the Superior Court passed June 10, 1889, in which decree said highway was laid out and established."

The relators were appointed by said special act as commissioners, with full power to reconstruct, repair, and main-

tain said bridge and causeways, and compel the five towns above-named to pay their several portions of any and all expenses so incurred by "mandamus or otherwise."

On the 16th day of April, 1895, the commissioners had incurred expenses to the amount of \$500 in the repair of the causeway, east of the bridge proper, and thereafter found the amount due from the town of Glastonbury as its proportion of said expense, under the provisions of said special act, to be the sum of \$15.00. An order was accordingly passed by said commissioners, and demand was made of the treasurer of said town, as the law provides. The treasurer refused to pay the order, and the commissioners thereupon brought this writ of mandamus to enforce payment of the same.

The respondent town makes return to the writ, setting up several defenses, stated briefly as follows:

1.

"The act of the General Assembly approved May 24, 1895, is in violation of the Constitution of the United States and of the tenth section, article one, thereof, because it impairs the obligations of an alleged contract existing between the State of Connecticut and The Berlin Iron Bridge Company for the construction of a bridge across said Connecticut River between the towns of Hartford and East Hartford, dated the 13th day of November, 1894, and amended January 14, 1895, and reaffirmed the 18th day of May, 1895." (Record, p. 23.)

2.

"The order and requisition of said commissioners passed on the 14th day of September, 1895 (relator's Exhibit "D"), by the terms of which the said town of Glastonbury was ordered and required to pay by its treasurer to the said the Commissioners for the Connecticut River Bridge and Highway District, or to their treasurer, the said sum of \$15.00, and all proceedings thereunder are in violation of

the Constitution of the United States and of the tenth section of article one thereof, and void for the reasons alleged in paragraph 12 of the return." (Record, p. 23.)

3.

"The special act, approved June 28, 1895, is in violation of the Constitution of the United States and of the tenth section of article one thereof, because it impairs the obligations of the alleged contract existing between the State of Connecticut and The Berlin Iron Bridge Company for the construction of a bridge across the Connecticut River between the towns of Hartford and East Hartford, and dated the 13th day of November, 1894, and amended January 14, 1895, and reaffirmed the 18th day of May, 1895." (Record, p. 25.)

4.

"The act, approved May 24th, and said order and requisition of said commissioners, dated September 14, 1895, are in violation of the Constitution of this state and of sections 1 and 11 of the first article thereof, because said act denies to said towns and to the citizens thereof equal rights under the laws of the state, and because it takes the property of said towns and of the citizens thereof without just compensation therefor." (Record, p. 23.)

5.

"Said special act is in violation of the Constitution of the State of Connecticut, and of sections 1 and 11 of the first article thereof, for the same reasons as alleged in paragraphs 14 and 21 of the return." (Record, p. 26.)

6.

"The writ is not properly brought in the names of the commissioners." (Record, pp. 26, 27.)

7.

"The writ cannot be brought against the treasurer of one town, but the treasurers of the five towns should have been joined." (Record, pp. 26, 27.)

The relators reply to the special defense based upon the alleged contract with the bridge company:

1.

That no legal, valid contract ever existed between the State of Connecticut and The Berlin Iron Bridge Company. (Record, p. 54.)

2.

That the alleged contract, if ever valid, has been surrendered to the state, canceled, and discharged, and all claims on account thereof have been fully paid and satisfied. (Record, pp. 53, 54.)

3.

That any and all parties claiming and having any right to claim anything on account of said alleged contract have had full opportunity to be heard, and have been heard, by a lawfully constituted tribunal, and their claims have been adjudicated, discharged, and paid to the satisfaction of the claimants. (Record, pp. 53, 54.)

The relators demur to the claim that the action is not properly brought in the names of the relators against the treasurer of the respondent town. (Record, pp. 56, 57.)

The relators demur specially to the claims of the respondent that the acts in question are in violation of any of the provisions of the Constitution of the United States or the State of Connecticut. (Record, pp. 55-59.)

The respondents rejoin by demurrer, claiming that the discharge of the alleged contract subsequent to the filing of the return cannot affect the status of the parties existing at the time the writ was served, and that as they were not parties to the proceeding resulting in a discharge and surrender of the contract, they cannot be affected by such discharge and surrender.

A judgment *pro forma* was entered by the Superior Court, in which the demurrers filed by the relators are sustained, and the demurrers filed by the respondent are overruled. The record contains the public and private act of 1895, the decree of the Superior Court passed in 1889, the orders of the commissioners, the award to The Berlin Iron Bridge Company, and the discharge of the contract by said company; and the parties agree that the money called for by the order was expended on the causeway east of the bridge, as hereinbefore stated.

Other facts found by the Superior Court on agreement of parties will be referred to in the argument. (See Record, pp. 67-69.)

BRIEF.

I.

The only question that need be considered in this case may be safely stated as follows:

Has the General Assembly the power to establish a bridge or highway district and place the burden of the construction and maintenance of a highway or bridge upon the towns or localities included in said District?

While several other questions are raised by the record which we are anxious to have this court consider and answer, we contend that this is the only question directly involved.

It is admitted that the expense incurred in this case by the Commissioners was in no way connected with the bridge to be constructed by The Berlin Iron Bridge Company, under the alleged contract of November, 1894. The money was expended in the repair of the causeway east of the bridge, and in no way connected with it. This causeway forms a part of the

free public highway to be maintained by the five towns. The proportion assessed against the town of Glastonbury was \$15.

The duty of the town to pay this sum and the power of the Commissioners to enforce its payment by mandamus must be conceded, provided the General Assembly had the power to compel the respondent town to share a portion of the expense incurred in the repair of the causeway in question.

Counsel for the town claim that the act of May 24, 1895, Chapter 148, and the special act of June 28, 1895, Chapter 343 (see Record, pp. 73-84) violate Sections 1 and 11 of the Constitution of the State of Connecticut, and Article 14 of the amendments to the Constitution of the United States, because

(1) The town and the citizens thereof are deprived of their property without due process of law.

(2) The town and the citizens thereof are denied the equal protection of the laws of the state, and particularly of Sections 2665, 2666, 2667, and 2768 of the General Statutes.

(3) The property of the town and its citizens is taken without just compensation therefor.

The provisions of the Constitution and the statutes claimed to be violated we print as follows: U. S. Constitution, Article 1, Section 10:

"SEC. 10. No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in payment of Debts; pass any Bill of Attainder, *ex post facto* Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility."

Constitution of Connecticut, Article 1, Sections 1 and 11:

"SEC. 1. That all men when they form a social compact are equal in rights; and that no man or set of men are en-

titled to exclusive public emoluments or privileges from the community."

"SEC. 11. The property of no person shall be taken for public use without just compensation therefor."

General Statutes:

"SEC. 2665. Towns at their annual meetings may provide for the repair of their highways, for periods not exceeding five years, and if any town neglect to so provide at such meeting the selectmen may provide for such repairs for a period not exceeding one year."

"SEC. 2666. Towns shall, within their respective limits, build and repair all necessary highways and bridges, and all highways to ferries as far as the low-water mark of the waters over which the ferries pass, except where such duty belongs to some particular person. It shall be the duty of the town of Waterbury to construct and maintain all necessary bridges over the Naugatuck and Mad Rivers, within the limits of said town."

"SEC. 2667. Necessary bridges between towns shall be built and kept in repair at their equal expense, unless they otherwise agree."

"SEC. 2768. Ferries between two towns shall be maintained at their equal expense, unless they otherwise agree; but any person liable to maintain such ferry may be compelled so to do by such town or towns, and to reimburse them for all charges legally incurred by them by reason thereof."

Sections 2665, 2666, 2667, and 2768 of the General Statutes are, of course, general provisions, and apply to those cases only where the towns of the state would otherwise be under no obligation to construct or repair highways and bridges.

If the state, in the first instance, may establish bridge and highway districts, and lay a tax upon such districts for the construction and maintenance of the bridges and highways therein, it naturally follows that the General Statutes quoted

will to that extent be modified or repealed, and it is, therefore, clear that the relators are entitled to a favorable judgment if the General Assembly may in any case form a bridge or highway district and place the burden of maintaining a bridge upon the towns included in such district.

Free highways and bridges are constructed and maintained for the benefit of the public. It is impossible to apportion the expense equally among the individuals that may use them. Whether the State, or Hartford County, or the five towns, or one town is compelled to pay for the bridge and causeways in question is unimportant.

An examination of the decisions of this court and other courts of last resort bearing upon this question will reveal but one line of thought and conclusion.

In 1786 the town of Granby was created from a portion of the territory of the town of Simsbury. A controversy arose, subsequently, concerning the maintenance of a bridge between the two towns, in which case our Supreme Court says (see *Town of Granby vs. Thurston and others*, 23 Conn., 415): "In 1786, the Legislature having incorporated the town of Granby, previously a part of the town of Simsbury, and, having provided in the act of incorporation, that 'the said town of Granby shall ever hereafter keep and maintain a good and convenient bridge across Farmington River between Pickerel Cove and Windsor line, if ever hereafter ordered by this Assembly.' In 1799, passed a resolution by which it was resolved, 'That the inhabitants of the town of Granby do build and hereafter maintain a good and sufficient bridge, at their expense, across said river,' referring to the place described in the former resolution, and where it was the dividing line between said towns. *Held, that such resolutions were not invalid, either as being unconstitutional, or on the ground that the General Assembly had no right to compel the town of Granby to support a bridge situated in part in the town of Simsbury; nor because said resolutions were passed*

without notice to said town of Granby; nor because the towns interested were not legally made parties; nor because at the passing said resolutions, there was a public statute law in force, providing that where a river is the dividing line between two towns, the bridges across the same should be supported equally by the two towns.

In *The Borough of Stonington vs. State*, 31 Conn., 214:

"No obligation rests upon any territorial or municipal corporation in this state by the common law to lay out, construct, or repair highways, and no application can be made to any court to enforce such obligation, *unless it is imposed and the process is given by express statutory provision.*"

In *Abendroth vs. Greenwich*, 29 Conn., 362, the court says:

"Towns, like other corporations, can exercise no powers except such as are expressly granted to them, or such as are necessary to enable them to discharge their duties and to carry into effect the objects and purposes of their creation." . . .

"*Towns as such have no inherent rights or powers. They are created by the General Assembly and are subject to the control of the General Assembly.*

"Now that provision enacted by the General Court in 1639 was both a grant and a limitation of vital power, as was intended to embrace towns thereafter created (as they were in fact) by law, *and is utterly inconsistent with the idea of a reserved sovereignty, or of an absolute right in the towns,* and constituted the town corporations, and the continuance of it has continued them so; and that provision, with the numerous special provisions then and since made, prescribing their officers, and regulating their meetings and other proceedings, *and imposing and prescribing their duties as subordinate municipal corporations, constitute their charters; and thus their powers, instead of being inherent or reserved, have been delegated and controlled by the supreme legislative power of the state from its earliest organization.*"

Webster vs. the Town of Harwinton, 32 Conn., 131.

In State *ex rel.* Coe *vs.* Fyler, 48 Conn., 158:

"This court has repeatedly declared that towns have no inherent powers; none except such as they have either by express grant or necessary implication."

In Turney *vs.* Town of Bridgeport, 55 Conn., 414:

"In Connecticut towns are territorial subdivisions of the state, created at the will of the legislature for the more convenient administration of local, public, and governmental affairs. They have no powers except those conferred by express enactment or necessarily implied to carry into effect the object and purposes of their being."

In Dailey *vs.* City of New Haven, 60 Conn., 320:

"Even towns, which under our peculiar political history and policy, it was strongly urged in Webster *vs.* Town of Harwinton, 32 Conn., 131, possessed, because of their independent character, large original powers, were held to have no original or inherent powers whatever, but only such as are either expressly granted by the legislative power of the state or are necessary to the performance of their duties as territorial and municipal corporations."

There is no common law duty upon towns to maintain highways.

In Chidsey *vs.* Canton, 17 Conn., 478 :

"The legislature have thought proper to impose upon the several towns in this state the burden of supporting the bridges and highways within their respective limits. The inhabitants of these towns derive no especial benefit from them, other than what is common to the citizens at large. Such accommodations for public travel are necessarily required in every civilized community, and generally must be provided at the public expense.

"The mode adopted for defraying such expense in this state is perhaps as convenient and equitable as any. At any rate the legislature in its wisdom has thought proper to give that mode the preference."

Mower *vs.* Inhabitants of Leicester, 9 Mass., 247.

Reed *vs.* Inhabitants of Belfast, 20 Maine, 246.

"In England, bridges, by statute, are generally supported by counties, and highways repaired by the occupiers of the lands in the parish where situated."

Burns' Justice, 164.

If there is any doubt about the policy and powers of the state in this regard it was evidently not entertained by the General Assembly of 1895.

Public Acts, 1895, Chapter 339.

This act in ten words repeals all of the sections of the general statutes which the respondents say cannot be changed by the General Assembly, and declares the future policy of the state to be directly in line with the provisions of the act which respondents say is unconstitutional.

This act is very brief and we quote it as follows:

"SECTION 1. Necessary bridges between towns, *except where it is otherwise especially provided for by law*, shall be built and kept in repair by such towns, and the expenses thereof shall be apportioned according to their grand lists, unless they otherwise agree.

"SEC. 2. *All acts and parts of acts inconsistent herewith are hereby repealed.*"

It is clear that the expression "except where it is otherwise especially provided by law," is merely declaratory of the rule that has always obtained in Connecticut.

The power of the General Assembly to establish a bridge district without regard to municipal or political subdivisions and place the burden of the construction and maintenance of a bridge upon such district in such proportions and in such manner as the General Assembly may provide, cannot be questioned.

In Desty on Taxation, 5th edition, pp. 276, 279, and 285, we find the law stated as follows: The legislature, in the exercise of its general powers of taxation as distinct from its power of local assessment, may create a special taxing district, Leehrman *vs.* Taxing Dist., 2 Lea, 425; Bowles *vs.* State, 37 Ohio St., 35, without regard to the municipal or political subdivisions of the state; Shaw *vs.* Dennis, 10 Ill., 416; Malchus *vs.* Dist. of Highlands, 4 Bush, 547; Shelby Co. *vs.* Railroad Co., 5 Bush, 225; People *vs.* Hawes, 34 Barb., 69; Bowles *vs.* State, 37 Ohio St., 35: and it is not essential that such districts shoruld correspond with the political divisions; People *vs.* Central R. Co., 43 Cal., 398; Malchus *vs.* Dist. of Highlands, 4 Bush., 547. It may create taxing districts without regard to any territorial division of the state, and confine the taxation to the district benefited. In People *vs.* Brooklyn, 4 N. Y., 419, the court says:

"But there never was any just foundation for saying that local taxation must necessarily be limited by or co-extensive with any previously established district. It is wrong that a few should be taxed for the benefit of the whole; and it is equally wrong that the whole should be taxed for the benefit of a few. No one town ought to be taxed exclusively for the payment of county expenses; and no county should be taxed for the expenses incurred for the benefit of a single town. The same principle of justice requires that where taxation for any local object benefits only a portion of a city or town, that portion only should bear the burthen. There being no constitutional prohibition, the legislature may create a district for that special purpose, or they may tax a class of lands or persons benefited, to be designated by the public agents appointed for that purpose, without refer-

ence to town, county, or district lines. General taxation for such local objects is manifestly unjust. It burthenes those who are not benefited, and benefits those who are not burthened."

"The legislature may establish a taxing district by placing several streets in one district for purposes of improvement, the cost of improving to be assessed throughout the district, and apportion the expense by frontage along them all."

Parker vs. Challiss, 9 Kan., 155.

"The power to determine what shall be the taxing district for any particular burden is purely a legislative power, subject to be controlled only by constitutional provisions."

Desty on Taxation, p. 276.

People vs. Mayor of Brooklyn, *supra*.

Shaw vs. Dennis, 10 Ill., 416.

Conwell vs. Connerville, 8 Ind., 358.

Parker vs. Challiss, 11 Kan., 394.

Hingham, etc., Turnpike vs. Norfolk Co., 6 Allen, 353.

Malchus vs. District of Highlands, 4 Bush, 547.

Philadelphia vs. Field, 58 Pa. St., 320.

Langhorne vs. Robinson, 20 Grat., 661.

In *Hingham Turnpike vs. Norfolk Co.*, 6 Allen (Mass.), 359, the court says:

"It often happens that a town, owing to its situation on a great route of public travel, and its intersection by a large stream, is obliged to make and support roads and bridges to an extent, and at an expense altogether disproportionate to its population and resources, in comparison with other towns in the vicinity. But no one ever supposed that such inequality absolved the town so situated from its legal duty of making and maintaining the roads and bridges within

its limits. *It is for the reason that this inequality sometimes becomes too great, and imposes too heavy a burden on a particular town or county, that the legislature deem it expedient, as in the case now before us, to pass some specific law for the construction and maintenance of a road or bridge with a view to a more just and equal distribution of a public charge among those immediately benefited, than would be made under the operation of general laws.* Such acts seem clearly to come within a due exercise of the power conferred by the clause of the constitution above cited, and their validity has been repeatedly recognized by this court."

The legislature judges finally and conclusively upon all questions of policy, as upon all questions of fact involved in the determination of a taxing district. In *Litchfield vs. Vernon*, 41 N. Y., 133:

"An examination of the case shows that, at the time of the passage of the act, the Long Island Railroad Company had the right of way in a tunnel constructed in Atlantic street, Brooklyn, for a railroad operated by steam, and were operating their road thereon; that the legislature deemed it expedient to close the tunnel, grade the street, lay a track upon the surface to be operated by horse power, etc., and to authorize the making of a contract with the railroad company for doing the work, and effecting the changes for a sum not exceeding \$125,000. To carry into effect this design, the act in question was passed, authorizing the commissioners, whose appointment was provided for in the act, to make the contract, and to make an assessment for the payment of the contract price, together with the incidental expenses upon the lands and premises situated in the district specified in the act. This total assessment for those purposes, it is apparent, was based upon the ground that the territory subjected thereto would be benefited by the work and change in question. *Whether so benefited or not, and whether the assessment of the expense should for this, or any other reason, be made upon the district, the legislature was the exclusive judge. The Constitution has imposed no restriction upon their power in this respect.* The counsel for the

appellant concedes that this is true, so far as closing the tunnel and grading the street are concerned, but insists that compensating the company for abandoning the use of steam and substituting therefor horse power, does not come within the like principles. I am unable to see upon what ground the power of the legislature can be limited in respect to the latter, consistently with the doctrine held by this court, in the *Town of Guilford vs. The Board of Supervisors*, 3 Kernan, 143. In that case, it was held, that the legislature had the power to impose a tax upon the inhabitants of a town to pay a claim that had no legal validity, and that could in no way be enforced against the town. In other words, that it was within the power of the legislature to impose a tax upon a locality for any purpose deemed proper, and that its power in this respect is not restricted by the constitution of the state. The other cases show that when the legislature deem it proper to impose the burden upon any specified locality, they have the power of so doing."

Courts are without power to interfere with the legislative discretion, however erroneous it may be. *Scoville vs. Cleveland*, 1 Ohio St., 138; *Gordon vs. Cornes*, 47 N. Y., 611; *Allen vs. Drew*, 44 Vt., 187; *Alecorn vs. Hamer*, 38 Miss., 652; *Arbegust vs. Louisville*, 2 Bush, 271.

In *Gordon vs. Cornes*, 47 N. Y., 608:

"The power of apportionment is included in the power to impose taxes, and is vested in the legislature; and in the absence of any constitutional restraint, the exercise by it of this power cannot be reviewed by the courts."

A special taxing district of part of a township may be created for drainage purposes, *Lydecker vs. Englewood Drain*, etc., Com's., 41 N. J. Law, 154; the act forming a levee district, to be composed of several parishes, is constitutional. *Yeatman vs. Crandall*, 11 La. Ann., 220.

Making and improving the public highways and the imposition of taxes are among the ordinary subjects of legislation, *People vs. Flagg*, 46 N. Y., 406; *East Portland vs. Multnomah Co.*, 6 Or., 62.

The legislature has power to pass a specific law for the construction and maintenance of a road or bridge, with a view to a more just and equal distribution of a public charge among those immediately benefited, than would be made under the operation of general laws, *Hingham & Q., Br. & T. Co. vs. Norfolk Co.*, *supra*.

In *Norwich vs. Co. Com'rs., of Hampshire*, 13 Pickering, 62:

"It will not throw much light on a question like this, to put extreme cases of the abuse of such a power, to test the existence of the power itself. It is said that the expense of erecting bridges in one section of the commonwealth, may be charged upon the inhabitants of another: that the inhabitants of Suffolk may be taxed for a bridge in Berkshire. But we think the decision in this case will warrant no such extravagant conclusion. Bridges, though they are designed for public convenience, and for all the citizens of the commonwealth, yet are more immediately beneficial to those whose local situation is such as to require the more frequent use of them. The people of a town and county where a bridge is situated have an interest in it, and derive a benefit from it, greater in degree than the rest of the community, according to their local position, and may, therefore, on general principles of justice, be required to contribute a larger share towards its erection and support. The possibility that such a power may be abused, has but a slight tendency to prove that it does not exist. There are a variety of other cases, in which it would be easy to suggest a possible gross abuse of legislative powers, but in which there can be no possible question of the existence of the power itself, under the express provisions of the constitution."

"The legislature has power to pass an act providing that a turnpike shall be laid out as a highway, and that the supreme judicial court shall appoint commissioners to esti-

mate and award the amount to be paid as damages for taxing the property of the company, and to determine and decree in what proportions this amount shall be paid by the counties in which the turnpike lies. *Hingham & Q. Br. & T. Co. vs. Norfolk Co.*, *supra*. Where the constitution has interposed no obstacles, the legislature may impose the burden of taxation for constructing a road for state purposes upon a district to be constituted for the purpose. *People vs. Lawrence*, *supra*. The state may impose the burden of constructing a road for state purposes where, in its wisdom, it is considered that it ought to rest."

Desty on Taxation, 279.

II.

The power of the General Assembly to form a bridge district like the one in question, and provide for the issue and payment of bonds for the construction of a public bridge, is in no way limited by the Federal or State Constitution. The legislature is the sole judge of benefits and assessments and methods of payment.

"*The legislature may authorize commissioners to construct roads, and to require the issue of bonds to pay therefor.*"

Desty on Taxation, 280.

People vs. Flagg, 46 N. Y., 406.

"The power of the legislature to impose local taxation is deducible from the general powers of the government."

Desty on Taxation, 281.

Slack vs. Railroad, 13 B. Mon., 28.

"The legislature has power to impose a tax on a local district for the construction of local improvements."

Desty on Taxation, 282.

Williams vs. Cammack, 27 Miss., 210; *Alcorn vs. Hamer*, 38 Miss., 652; *Daily vs. Swope*, 47 Miss., 367.

"Assessments made for benefits conferred are a valid exercise of the taxing power."

Desty on Taxation, 282.

State vs. St. Louis, 62 Mo., 244.

"The legislature has authority to lay and assess taxes to raise money for a public object on a particular town, district, or section which may reasonably be expected to derive some peculiar or special advantage or benefit from an expenditure of money which will not be enjoyed to the same degree by other portions of the state. *Merrick vs. Inhab. of Amherst, 12 Allen, 594; Marks vs. Pardue Univ., 37 Ind., 155;* or it may provide that a portion of the expense be borne by the whole county and a portion by a town; *Norwich Inhab. vs. Hampshire Co., 13 Pick., 60;* or that the whole expense be borne by the town, *Hingham & Q. Br. & T. Co. vs. Norfolk Co., supra.*"

Desty on Taxation, 283.

"So a special tax may be levied on property in a precinct to repair and maintain a bridge across the river, *Shaw vs. Dennis, 5 Gilman, 405.*

"The legislature can, by mandatory act, compel a county to levy taxes and incur debts and obligations for the construction and maintenance of a way or bridge within the limits of another county, where the purpose is not only public but the object is at the same time local and of special and peculiar interest to the people sought to be taxed."

Desty on Taxation, 284, 285.

Talbot Co. vs. Queen Anne's Co., 50 Md., 245.

Thomas vs. Leland, 24 Wend., 65.

In Com. vs. Newburyport, 103 Mass., 129.

"*In creating a taxing district the legislature may appoint the officers provisionally, to be succeeded by officers duly elected by the qualified voters of the district.*"

Desty on Taxation, 277.

Luehrman vs. Taxing District, 2 Lea, 425; People vs. Hurlbut, 24 Mich., 44.

"The power to levy taxes may be delegated by the legislature to commissioners or any other agents, and when the legislature provides for a tax by any agency whatever, it is, in contemplation of the Constitution, the act of the people."

Desty on Taxation, 277.

Baltimore *vs.* State, 15 Md., 376.

In the case of Mobile County *vs.* Kimball, 102 U. S., 243, Mr. Justice Field says:

"The Act of February 16, 1867, created a Board of Commissioners for the improvement of the river, harbor, and bay of Mobile, and required the president of the commissioners of revenue of Mobile County to issue bonds to the amount of \$1,000,000, and deliver them, when called for, to the board, to meet the expenses of the work directed. The board was authorized to apply the bonds, or their proceeds, to the cleaning out, deepening, and widening of the river, harbor, and bay of Mobile, or any part thereof, or to the construction of an artificial harbor in addition to such improvement." . . . p. 696.

"The objection to the Act here raised is different from that taken in the state court. Here the objection urged is that it fastens upon one county the expense of an improvement for the benefit of the whole state. Assuming this to be so, it is not an objection which destroys its validity. When any public work is authorized, it rests with the legislature, unless restrained by constitutional provisions, to determine in what manner the means to defray its cost shall be raised. It may apportion the burden ratably among all the counties, or other particular subdivisions of the state, or lay the greater share or the whole upon that county or portion of the state specially and immediately benefited by the expenditure.

"It may be that the Act in imposing upon the County of Mobile the entire burden of improving the river, bay, and harbor of Mobile is harsh and oppressive, and that it would have been more just to the people of the county if the legislature had apportioned the expenses of the improvement, which was to benefit the whole state, among all its

counties. But this court is not the harbor in which the people of a city or county can find a refuge from ill-advised, unequal, and oppressive state legislation. The judicial power of the Federal Government can only be invoked when some right under the Constitution, laws, or treaties of the United States is invaded. In all other cases, the only remedy for the evils complained of rests with the people, and must be obtained through a change of their representatives. They must select agents who will correct the injurious legislation, so far as that is practicable, and be more mindful than their predecessors of the public interests." . . . p. 704.

"It only says that the board was created by the General Assembly of the state, and was not an agent *appointed* by the County of Mobile. It does not state that the board was not an agent of the county, but only that its appointment was not from the county, and that it drew its existence and authority from the statute of the state. It is not necessary, to constitute an agency of a political subdivision of a state, that its officials should be elected by its people or be appointed with their assent. It is enough to give them that character that, however appointed, they are authorized by law to act for the county, district, or other political subdivision. Here, the harbor board, created by a law of the state, was authorized to make contracts for a public work in which the county was specially interested, and by which it would be immediately and directly benefited, and to require obligations of the county to meet the expenses incurred. It is a mere battle of words to contend that it was, or was not, an agent of the county because its members were appointed by some exterior authority. It is enough in this case that by force of the law of its creation it could bind the county for work which it contracted."

. . . . p. 706.

We also quote from *The People ex rel. vs. Flagg et al.*, 46 N. Y., 403, as follows:

"The legislation involved in this case is challenged upon the ground that it is not competent for the legislature to

compel the town of Yonkers to incur a debt for the improvements authorized to be made. It is conceded that the legislature could direct the improvements to be made, and could lawfully impose a tax upon the property of the citizens of the town to pay the necessary expenses, or that it might authorize a town debt to be created, with the consent of the people of the town, or some officer or officers representing the municipality ; but that it cannot directly compel the creation of the debt without the consent of the citizens or town authorities.

" All legislative power is conferred upon the Senate and Assembly ; and if an Act is within the legitimate exercise of that power it is valid, unless some restriction or limitation can be found in the Constitution itself. The distinction between the United States Constitution and our State Constitution is that the former confers upon Congress certain specified powers only, while the latter confers upon the legislature *all* legislative power. In the one case the powers specifically granted can only be exercised. It cannot be denied that the subject of the laws in question is within legislative powers. The making and improvement of public highways, and the imposition and collection of taxes are among the ordinary subjects of legislation. The towns of the state possess such powers as the legislature confers upon them. They are a part of the machinery of the state government and perform important municipal functions which are regulated and controlled by the legislature. Private property cannot be taken for public use without compensation. But this principle does not interfere with the right of taxation for proper purposes. The legislature, in substance, directed certain highways to be made and constructed in the town of Yonkers and imposed a tax upon the town to pay the expense of the work, but to prevent too large a tax at one time, it directed bonds to be given, payable at different periods, so that no more than a limited sum should become due at one time.

" The bonds to be given are town bonds ; they are to be issued by town officers and the tax to pay them is imposed upon the property of the town. If the legislature may

authorize the town to incur this debt, why may it not direct it to be done? As a question of power, I am unable to find any restriction in the Constitution. It is not within the judicial province to correct all legislative abuses."

"In the laying out of a bridge as a highway by county commissioners under the St. of 1868, c. 309, § 8, and according to the provisions of the St. of 1867, c. 296, § 4, that they should 'determine and fix the relative proportions of expense for maintaining' the bridge, 'to be borne by said county and any of the cities or towns lying near to, or contiguous to' the bridge, 'as in their judgment may be just and equitable, which said proportion of expense so determined' 'shall become obligatory upon said county and upon said cities and towns as aforesaid to pay in the manner and at the times prescribed by said county commissioners,' the commissioners were authorized, but not required, to impose part of the expense for maintaining the bridge upon the county or upon the cities and towns lying near but not contiguous to the bridge, and might lawfully impose the whole maintenance of the bridge on the several towns or cities within which it was situated, and determine and fix the relative proportions in which they should respectively bear the expense thereof by assigning to each a specific part of the bridge to be maintained by it exclusively."

Commonwealth vs. City of Newburyport, 103 Mass., 129.

III.

Statutes regulating the construction and maintenance of highways and bridges are in no sense contracts with the town affected. Towns cannot acquire vested rights under such laws, and the power of the legislature to change and redistribute these public burdens has always been conceded.

In *Scituate vs. Weymouth*, 108 Mass., 130, the court says:

"It is too well settled to be disputed that it is within the constitutional power of the legislature to make laws for the construction, support, and maintenance of roads and bridges and for the distribution among the counties and towns of the burdens of maintaining them; and this power may be exercised by the legislature, in its discretion, either by general or special laws. It is clear also that it is competent for the legislature to delegate to commissioners the authority to determine the amount or share of these burdens which shall be borne by the several counties or towns. *Salem Turnpike & Chelsea Bridge Co. vs. Essex*, 100 Mass., 282. *Hingham & Quincy Bridge & Turnpike Co. vs. Norfolk*, 6 Allen, 353. *Attorney-General vs. Cambridge*, 16 Gray, 247. *Harwich vs. County Commissioners*, 13 Pick., 60. In the exercise of this power the legislature passed the St. of 1862, c. 177, under which the town of Weymouth now claims and which has been held by the court to be constitutional and valid. *Hingham & Quincy Bridge & Turnpike Co. vs. Norfolk*, 6 Allen, 353. That statute, so far as regards the maintenance of the bridges, was not in any sense a contract with the towns affected by it. It was an exercise of the authority of the legislature to distribute public burdens and duties. *It is clear that under the same constitutional power it had the right to change the law and redistribute these public burdens* if, from a change of circumstances or other reasons, it deemed it just and proper so to do. *Cambridge vs. Lexington*, 17 Pick., 222. *Attorney-General vs. Cambridge*, 16 Gray, 247.

"The obligation of the town of Weymouth under the Act of 1862 was not founded upon any contract, express or implied. It did not acquire any vested right to require of the other towns the contribution towards the expenses of maintaining the bridges fixed by that Act."

In *Inhabitants of Brighton vs. Wilkinson & others*, 2 Allen (Mass.), 27:

"The clause in St. 1824, c. 15, to authorize the proprietors of West Boston bridge to establish a turnpike road

from Cambridge to Watertown,' which provides that 'neither the towns of Watertown, Cambridge, or Brighton shall ever be compelled to support any part of said road or bridge without their own consent,' is *not in the nature of a contract between the commonwealth and those towns that they shall be forever exempt from the burden of maintaining a highway over the land included within the limits of the turnpike road,' and St. 1859, c. 156, 'to establish as a highway a part of the turnpike road from Cambridge to Watertown,' is constitutional and valid.*

In Carter *vs.* Bridge Proprietors, 164 Mass., 226.

"The general rule that *towns* and highways shall be maintained by the counties and towns within which they are situated, organized in the legislature, and the power that established it may impose or release it. As a general rule it may be substantially convenient and equitable, and either convenience or justice may require that it shall not be inflexible. The discretionary power of the legislature in the distribution of public burdens of this character has been for a long time recognized by this court."

In Att'y-Gen. *vs.* City of Cambridge, 16 Gray (Mass.), 247:

"A statute authorizing county commissioners to lay out as a public highway a bridge originally established by the legislature over a navigable stream, and used as a public way for two hundred years, during which period the legislature has from time to time imposed upon various towns the expense of keeping the bridge in repair, and releasing from their obligation some of the towns upon which the duty and expense of maintaining it has been imposed by previous statutes, is constitutional; and leaves it the duties of the towns not released to maintain the bridge until the exercise by the county commissioners of the authority conferred upon them, even after their refusal, upon petition, to lay out the bridge as a public highway."

In Agawam *vs.* Hampden, 130 Mass., 530, the court says:

"The counties, towns, and cities into which the commonwealth is divided are strictly public corporations, established

for the convenient administration of government; *their municipal powers and duties are not created and regulated by contract, express or implied, but by acts passed by the legislature from time to time, according to its judgment of what the interests of the public require; and they have not the same rights to judicial trial and determination, in regard to the obligations imposed upon them, as other corporations and individuals have.*" Free-lan^d vs. Hastings, 10 Allen, 570, 579, 580. Rawson vs. Spencer, 113 Mass., 40, 45. Stone vs. Charlestown, 114 Mass., 214, 223, 224. Coolidge vs. Brookline, 114 Mass., 592, 596, 597. Hill vs. Boston, 122 Mass., 344, 349, 355-357. Laramie vs. Albany, 92 U. S., 307. Tippecanoe Commissioners vs. Lucas, 93 U. S., 108, 114. New Orleans vs. Clark, 95 U. S., 644, 654.

"It is accordingly well settled that the legislature may enact that a particular road or bridge shall be a public highway, or may direct it to be laid out as such by county commissioners, and, in either case, may order the cost thereof, including the compensation to be made to owners of land, or to corporation by which the way or bridge has been previously laid out as a turnpike or toll-bridge under a legislative charter, as well as the cost of maintaining it and keeping it in repair, to be paid either by the commonwealth or by the counties, cities, or towns in which it lies, or which may be determined by commissioners appointed for the purpose by the courts, to be specially benefited thereby."

"The policy of this state has always been to impose upon towns the duty and burden of building and maintaining all necessary highways and bridges within their respective limits, except where such duty belonged to some particular person. Necessary bridges between towns are to be built and maintained at their equal expense." New Haven & Fairfield counties vs. Milford, 64 Conn., 573.

"But it is not found necessary for us to decide finally on this first and more doubtful question, as our opinion is clearly in favor of the defendant in error on the other question, *viz.*: that the parties to this grant did not by their charter stand in the attitude towards each other of making a contract by it, such as is contemplated in the constitution, and as could not be modified by subsequent legislation. The legislature was acting here on the one part, and public municipal and political corporations on the other. They were acting too, in relation to a public object, being virtually a highway across the river, over another highway up and down the river. From this standing and relation of these parties, and from the subject matter of their action, we think that the doings of the legislature as to this ferry must be considered rather as public laws than as contracts. They related to public interests. They changed as those interests demanded. The grantees likewise, the towns being mere organizations for public purposes, were liable to have their public powers, rights, and duties modified and abolished at any moment by the legislature.

"They are incorporated for public, and not private objects. They are allowed to hold privileges or property only for public purposes. The members are not shareholders, nor joint partners in any corporate estate, which they can sell or devise to others, or which can be attached or levied on for their debts.

"Hence, generally, the doings between them and the legislature are in the nature of legislation rather than compact, and subject to all the legislative conditions just named, and therefore to be considered as not violated by subsequent legislative changes.

"It is hardly possible to conceive the grounds on which a different result could be vindicated without destroying all legislative sovereignty and checking most legislative improvements and amendments as well as supervision over its subordinate public bodies." The Town of East Hartford *vs.* The Hartford Bridge Company, 10 Howard, 533.

"In *Seituate vs. Weymouth*, *supra*, it was held that, after the legislature had laid out a turnpike and toll-bridge as a public highway, and imposed the expenses of repairing and maintaining it upon such towns as commissioners appointed by this court should determine to be specially benefited, and the award of such commissioners, determining that seven towns named were so benefited, and should bear such expenses in certain proportions, had been accepted by the court, *a subsequent legislature might enact that such expenses for the future should be borne by such towns as commissioners appointed by the Governor should determine to be benefited*: and that the award of commissioners so appointed, determining that the whole of such expenses for the future should be borne by three of those towns only, was valid."

Agawam vs. Hampden, 130 Mass., 531.

IV.

The respondent town is "specially benefited" by the highway and bridge in question.

After finding the preliminary facts necessary to give jurisdiction, the commissioners in 1887-89 laid out and established this highway, which included the bridge and causeway, and then found "That the towns of Hartford, East Hartford, Glastonbury, South Windsor, and Manchester will be specially benefited by the layout and establishment of such free highway."

The court accepted the report of the commissioners, and approved and confirmed the layout and the finding of the commissioners that said towns, including the respondent town, were specially benefited thereby. See Record, pp. 8-14.

The decree of the Superior Court, ordered as it was after formal hearing, in which hearing the present parties, *i. e.*,

the state and the respondent town were parties, is conclusive and final as an adjudication on the question of benefits, and is as binding on the respondent as when it was first entered on the records of the court.

"The decision of a court of competent jurisdiction is final and conclusive upon the parties, and as to the title claimed under it. Rose vs. Himely, 4 Cranch, 241; Gelston vs. Hoyt, 3 Wheat., 315.

And a fact which has been directly tried and determined, by a court of competent jurisdiction, cannot be again contested between the same parties, in the same court or any other. *Hopkins vs. Lee, 6 Wheat., 113; Elliott vs. Peirsol, 1 Pet. R., 34.*

If a decree thereon is in legal form, it is complete evidence of its own validity. *Spratt vs. Spratt, 4 Pet. R., 48.*

Where the court has a peculiar and exclusive jurisdiction, its decree is binding upon the judgment of any other court, in which the same subject comes immediately into controversy." *Holcomb vs. Phelps, 16 Conn., 132.*

"If an issue, as distinguished from a collateral or evidentiary matter, has been finally decided by a competent judicial; if it was directly and not merely collateral, nor incidentally involved; and if it was material and contested, the adjudication, as between the contesting parties and their respective powers, will bar a new contest of the same issue in another judicial proceeding involving a different subject matter."

Van Fleet's Former Adjudication, Vol. 1, p. 603.

In *Ashton vs. Rochester, 133 New York, 187:*

"True, this is not a general tax, but a special and local assessment. But it is nevertheless an exercise of the taxing power; and its validity, as well as the right of the plaint-

iffs to question or assail it in the courts, rests on the same principles as are applicable to an assessment or tax for general purposes. If the expense of the improvement was to be paid out of the city treasury, there would then be little doubt that an adjudication upon an application for a mandamus, involving, as this did, the validity of the proceedings up to that time, would have bound all the taxpayers. Is the rule any different if a small part, or even the whole of the expense, is to be paid by the property-owners within a certain district? Is the principle changed because the area over which the tax was distributed is contracted? The executive board laid the matter on the table, and, in effect, refused to act, treating the resolution as rescinded, by the common council. They were brought into court, and the very question involved was whether or not the board had authority to contract for the execution of the work; and the court held, upon full argument and against the contention of the board, that they had. The question was whether or not they had power, under the proceedings, to make a contract and incur an expense, which was to be paid by the property-owners; and it was adjudged that they had, and that it was their duty to do so. When the executive board was before the court on this application, they represented and spoke, not only for themselves and the city, but also the property-owners who were to be bound by the contract, and whose property was to be assessed for the expenditure which the work embraced in the contract involved. When the court directed the board to make the contract, the effect of its judgment was to direct the imposition of a tax upon the plaintiff's property. On that question the plaintiffs could have been heard, and, on their application, were entitled to a hearing and to be made parties to the proceeding, and to appeal from the decision. The executive board, in making the contract and supervising the work, acted, in a certain sense, as the agents of the property-owners, and therefore, the judgment of the court, that the resolution of the common council was still in force, not only bound the agents, but the parties they represented, as well."

There is no force to the claim that the decree of 1889 is inadmissible under the pleadings as proof of special benefits.

It is embodied in the mandamus not only as descriptive of the highway, but as a *part of the complaint*, in which it is claimed that it was the duty of the respondent to honor the order of the commissioners. And the relators are as clearly entitled to the full force of this judicial finding, as they are to the Act of 1895, which is based upon it, follows it, and refers to it.

This act takes up and follows the adjudication of 1889 and the decree of the Superior Court, in which it is found and adjudged that Glastonbury is specially benefited. The question then raised was precisely the same as the question now in issue, and between the same parties. The state then undertook to place the support of this highway upon these same towns. The towns appeared, were heard, and no exception was taken to the jurisdiction of the court or to the constitutionality of the act. Judgment was recorded, and no appeal or review was instituted. As far as the claim may have any bearing upon the case, it is *res adjudicata*.

V.

The decree of 1889 and its effect as proof of special benefits is not necessary to the relators in this case, because the General Assembly has power to order a locality or district to construct and maintain a public bridge or highway, and the proportion to be paid by each municipality cannot be reviewed by the courts.

We have cited many cases which support this principle in discussing the general powers of the legislature, and we here cite one more directly in point:

"The power of apportionment is included in the power to impose taxes, and is vested in the legislature; and in

the absence of any constitutional restraint, the exercise by it of this power cannot be reviewed by the courts.

"Where a tax is imposed upon a particular locality to aid in a public purpose, which the legislature may reasonably regard as a benefit to that locality, as well as to the state at large, inequality in the apportionment of the expenses of the undertaking, with reference to the benefits resulting to the state and the locality, cannot be alleged for the purpose of impugning the validity of the act." *Gordon vs. Cornes*, 47 N. Y., 608.

Glastonbury is so situated geographically that the bridge in question is not only a benefit, but an absolute necessity. Electric cars run from Hartford to Glastonbury across this bridge and highway many times every day. The ordinary daily commerce of the four towns situated on the east side of the river, included in the district taxed, depends almost entirely upon the facilities for transportation afforded by the bridge. The commission appointed in 1887 to assess benefits, after a most careful and exhaustive hearing, found that Glastonbury would be benefited to the extent of 25/210 of the sum required to enfranchise the bridge. It may well be presumed that the General Assembly of 1895 took these and many other circumstances into consideration, and the geographical situation of the respondent, of which this court may take judicial cognizance, is conclusive evidence of benefits largely in excess of the burden imposed by the act in question; and we insist that the discretion of the legislature in such cases is not subject to modification or control by the courts. The courts have passed upon this question many times in our own and other states, and the constitutional restrictions relied upon by the respondent have no application whatever to the case at bar.

VI.

THE CONTRACT WITH THE BERLIN IRON BRIDGE CO.

The alleged contract between the State of Connecticut and The Berlin Iron Bridge Company was clearly illegal and ultra vires.

The Act of 1893 should be fairly construed in the light of the language used, and its manifest intent and purpose.

This act distinctly limits the liability of the state to the maintenance of the bridge or bridges then existing :

"SECTION 1. The highways across the Connecticut River at Hartford, where the *present* bridges now are together with *said* bridges, shall hereafter be maintained," etc., and in Section 2, "the expense of repairing and maintaining *said* bridges — *present bridges* — shall be incurred by said board," etc. ; and again in Section 3, "The Governor shall appoint three commissioners, who shall constitute a board for the care, maintenance, and control of *said* bridges."

Let us give to this language, however, the freest and widest scope possible, and see if it confers the powers assumed by the commissioners of 1893. "*Said*" bridge was to be repaired and maintained by the state, and we will assume that maintain and build are easily synonymous. The state then must maintain and "rebuild," if necessary, "*said*" bridge. It is clear that neither the act nor the men who voted for it anticipated or intended the rebuilding of this bridge; still if the word maintain was adroitly used by certain gentlemen, who did intend to have a new bridge immediately, and its full scope escaped the attention of the law-makers, for the purpose of the argument we will write between the words "maintain" and "*said*" the words, "rebuild and reconstruct." We have then put in all that the eager friends of

the bill dared to hope for, when they blindfolded the innocent legislator with the word "maintain," and we cannot be asked to erase the word "said," for it is used five times in the act, and is the only word used in designating the particular structure to be maintained at the expense of the state. Not a bridge, but "*said*" bridge shall be maintained and "rebuilt" (?), if necessary, at the expense of the state.

That the commissioners were thus limited by the act in its widest and freest construction is clear, and the law controlling such agencies is not less clear and imperative. The state, at the most, agreed to bind her treasury to pay for the cost of maintaining, "rebuilding" (?), if necessary, *said* bridge; *said* bridge was a wooden structure, 24 feet wide —barely wide enough for two carriage-ways — and could easily have been rebuilt for \$80,000. What was the state bound to do? As much and no more than would be required of an individual under similar circumstances. The commissioners, acting for the state, could not exceed the authority of the act. An agent has no power to bind his principal outside the scope of his authority. One illustration is sufficient: Suppose the bridge had remained a toll-bridge, and an individual had agreed with the company owning the bridge that for a certain percentage of the tolls he would maintain and repair the bridge, and rebuild the same if destroyed. In an action upon that agreement, would the courts say that he was bound to build an ornate steel structure of twice the capacity and four times the cost?

"Parties dealing with an agent known by them to be acting under an express power, whether the authority conferred be general or special, are bound to take notice of the nature and extent of the authority conferred. They must be regarded as dealing with that power before them, and are bound at their peril to notice the limitations thereto prescribed, either by its own terms or by construction of law." Mechem on Agency, § 274.

"And this rule is particularly true in the case of public agents. Here the authority is a matter of public record, or of public law, of which every person interested is bound to take notice; and there is no hardship in confining the scope of such an agent's authority within the limits of the express grant and necessary implication. The fact that the same act might have been within the scope of the authority if created by a private individual is not conclusive.

"Thus in a case involving the validity of a contract made by the city commissioner of Baltimore, the court said: 'Although a private agent, acting in violation of specific instructions, yet within the scope of general authority, may bind the principal, the rule as to the effect of a like act of a public agent is otherwise. The city commissioner was the public agent of a municipal corporation, clothed with duties and powers specially defined and limited by ordinance bearing the character and force of public laws, ignorance of which can be presumed in favor of no one dealing with him on matters thus conditionally within his official discretion. For this reason, the law makes a distinction between the effect of the acts of an officer of a corporation and those of an agent of a principal in common cases. In the latter the extent of the authority is known only to the principal and agent, while in the former it is a matter of record in the books of a corporation or of public law.'" Mechem on Agency, § 292.

"Express grants of power to public officers are usually subjected to a strict interpretation, and will be construed as conferring those powers only which are expressly imposed or necessarily implied.

"Such an officer, therefore, can create rights against the state, or other public authority represented by him, only while he is keeping strictly within the limits of his authority as so construed.

"So it is well settled that when such officers undertake, by virtue of the authority conferred upon them, to build up rights against such third persons, the limits and condi-

tions imposed upon their authority must be rigidly observed, or their acts will be unavailing." Meehem on Public Offices and Officers, § 511.

"The fact that a given act might have been deemed to be within the scope of the authority if created by a private individual is not conclusive. Thus in a case involving the validity of a contract made by the city commissioner of Baltimore, the court said: 'Although a private agent, acting in violation of specific instructions, yet within the scope of a general authority, may bind his principal, the rule as to the effect of a like act of a public agent is otherwise. The city commissioner was the public agent of a municipal corporation, clothed with duties and powers specially defined and limited by ordinances bearing the character and force of public laws, ignorance of which can be presumed in favor of no one dealing with him on matters thus conditionally within his official discretion. For this reason the law makes a distinction between the effect of the acts of an officer of a corporation and those of an agent for a principal in common cases. In the latter the extent of authority is necessarily known only to the principal and agent while in the former it is a matter of record in the books of the corporation or of public law.' Mayor *vs.* Eschbach, 18 Md., 282.

"In respect to the acts and declarations and representations of public agents it would seem that the same rule does not prevail which ordinarily governs in relation to mere private agents. As to the latter the principals are in many cases bound where they have not authorized the declarations and representations to be made. But in cases of public agents the government or other public authority is not bound, unless it manifestly appears that the agent is acting within the scope of his authority or he is held out as having authority to do the act or is employed in his capacity as a public agent to make the declaration or representation for the government. Indeed, this rule seems indispensable in order to guard the public against losses and injuries arising from the fraud or mistake or rashness and indiscretion of their agents. And there is no hardship in

requiring from private persons dealing with public officers the duty of inquiring as to their real or apparent power and authority to bind the government.' " *U. S. vs. Doherty*, 27 Fed. Rep., 730.

" Individuals must take notice of the extent of the authority of an officer. The government is not bound by an act of its agent unless within the scope of his authority or he had been held out as having authority to do the act." *Hawkins vs. United States*, 96 U. S., 689. *Whiteside vs. United States*, 93 U. S., 247.

" The government does not guarantee the integrity of its officers or the validity of their acts. They are but the servants of the law and if they depart from its requirements the government is not bound." *Moffat vs. United States*, 112 U. S., 24.

" The government is not liable to individuals for the misfeasance, laches, or unauthorized exercise of power by its officers and agents." *Gibbons vs. United States*, 8 Wall., 269.

" Unauthorized acts of officers cannot estop the government from insisting upon their invalidity, however beneficial they may have proved to the United States." *Filor vs. United States*, 9 Wall., 45. *Machem on Public Officers*, § 512.

The contract was clearly illegal and *ultra vires* when the statute is given all the length and breadth desired by the respondent, but now let us look at the actual legal strength of this word "maintain." In the first place it will be observed that it has never been used by the General Assembly except in the sense of repair and it always pertains to structures already in existence. See Secs. 2670 and 2672 in which the word "maintain" is used in its proper sense. The dictionaries give it this and no additional force and the courts have long since decided that the words maintain and build are of entirely different meaning and that maintain as applied to existing structures never requires them to be rebuilt.

" Two things are indicated too plainly by the language to admit of confusion; to build or construct a railroad is one

thing: to maintain the structure after it is built is another. The word 'maintenance' has reference to the powers to be exercised after completion. This is the natural force of the expression: any other meaning is unnatural and could not be inferred by the language of the act without departure from the common acceptance of the words of the section and without the least excuse for the departure." *Moorehead vs. Little Miami R. R. Co., 17 Ohio, p. 353.*

Will this court go beyond the language of the law and the intent of the parties and lay down the rule that the word maintain when applied to an existing structure requires a rebuilding, not of a similar structure, but such a structure as shall suit the taste of the contractor regardless of expense.

If we look at the bridge called for by the alleged contract printed in the record we will see that it requires a structure no more like the one that was to be maintained than the present Capitol building is like either of its predecessors, and we insist that as the act merely gives the commissioner the power to maintain a certain existing structure, *said bridge*. The hasty signing of this astounding compact, whereby the people of Connecticut were bound to provide an ornamental, steel viaduct, for the accommodation of railroads as well as the ordinary public uses at an expense of \$400,000, was an insult to the General Assembly and was clearly void, and the fact that such things are possible renders it doubly important that some reasonable restriction be put to the discretion of state agents in the exercise of their ever increasing opportunities to assail the treasury of the state.

VI.

But we will assume for the sake of argument that the bridge company had a contract with the state.

This contract cannot be taken advantage of by the respondent in this or any other proceeding.

We ought perhaps to state at the outset that we should have demurred to that part of the return which seeks to take advantage of this contract as a special defense, but for the fact that the denials and the special matters set up by the respondents rendered it impossible. The denial by the respondent of the allegation now admitted that the money called for by this order was expended on the causeway east of the bridge proper and forming no part of the bridge structure or the approaches thereto could not be allowed to stand, and inasmuch as the constitutional objections, based upon an alleged violation of the contract with the Bridge Company, whatever force they may once have had, have since been utterly lost to the respondent by the discharge and surrender of the contract to the state and full payment and satisfaction of all claims by whomsoever made on account of the same: it seemed to the relators in view of the great inconvenience that must be suffered by thousands of people living in the bridge district until the powers of the relators with regard to the bridge structure proper have been judicially announced it was their duty, as far as possible, to submit to this court the present state of this contract, otherwise the main reliance of the respondents would be passed as not affecting the particular order in question but might be left to affect subsequent orders calling for funds to defray the expense of constructing a new bridge.

The relators are therefore willing, and, as far as agreement of parties can avail, we have tried to give to this court for their determination everything that can be shown in support of the claim that the commissioners are acting under an unconstitutional and voidable act, in all or any of its provisions.

We think it will be immediately noted by this court that the claims of the respondent in this regard, as set forth in paragraphs 6, 7, 8, 9, and 14 of the reasons of appeal, have no legal force whatever.

If the court finds that the alleged contract was *ultra vires* and illegal, as the relators maintain, then the constitutional

questions, which the respondents have struggled so hard to raise, are at once eliminated from the case.

If this court finds the contract was once valid the relators insist that the respondent is too far from it to take advantage of the points raised, and that if near enough to it to stand with it in court, the respondent also falls with it when it falls.

The acts of 1895 do not in any way violate the obligations of this contract.

If the acts of 1895 do abrogate the contract, The Berlin Iron Bridge Company is the only party whose complaint can be heard by the courts.

The contract having been surrendered and canceled by the party in whose benefit it was written, the act stands as valid and constitutional in every respect as though the contract had never existed.

All public or private acts are presumed to be constitutional and are voidable only, and if the party aggrieved by an unconstitutional provision acquiesces in its operation, he waives his right to question its validity and the law operates as to all parties from the date of its passage.

First let us look at the act itself. Record, pp. 82-84.

Here we find a complete protection of the contract with the bridge company. The company if they wish to surrender it may do so and receive full compensation and reimbursement for all expenses and losses incurred under it, or the company may have the question of its validity determined by the courts and the state must abide the result. If found valid the company shall build the new bridge and the state pay for it to the last dollar.

It is well settled that changes in the forms of action and modes of proceeding do not amount to an impairment of the obligations of a contract, if an adequate and efficacious remedy is left. This limitation upon the prohibitory clause of the constitution in respect to the legislative power of the states over the obligations of contracts, was suggested by Chief Justice Marshall in *Sturges vs. Crowninshield*, 4 Wheat., 200, 207, and has been uniformly acted on since.

- Cooley Const. Lim., 5th Ed., 349.
- Mason *vs.* Haile, 12 Wheat., 378.
- Bronson *vs.* Kinzie, 1 How., 316.
- Von Hoffman *vs.* City of Quincy, 4 Wall., 553.
- Drehman *vs.* Stifle, 8 Id., 602.
- Gunn *vs.* Barry, 15 Id., 623.
- Walker *vs.* Whitehead, 16 Wall., 317.
- Terry *vs.* Anderson, 95 U. S., 633.
- Tennessee *vs.* Sneed, 96 Id., 69.
- Louisiana *vs.* Pilsbury, 105 Id., 301.

As was very properly said by Mr. Justice Swayne in *Von Hoffman vs. City of Quincy*, *supra*:

It is competent for the states to change the form of the remedy, or to modify it otherwise, as they may see fit, provided no substantial right secured by the contract is thereby impaired. No attempt has been made to fix definitely the line between alterations of the remedy, which are to be deemed legitimate and those which, under the form of modifying the remedy, impair substantial rights. Every case must be determined upon its own circumstances. Whenever the result last mentioned is produced, the act is within the prohibition of the constitution and to that extent void.

In all such cases the question becomes, therefore, one of reasonableness, and of that the legislature is primarily the judge.

See also

- Munn vs. Ill.*, 94 U. S., 132.
- Jackson vs. Lamphire*, 3 Pet., 290.
- Cooley Const. Limitations, p. 443.

We have nothing to do with the motives of the legislature, if what they do is within the scope of their powers under the Constitution.

It will be observed that the state by the acts complained of, so far as they affect this contract, protect it, if valid.

VII.

It must be conceded that the state may by public act interfere with a contract entered into by her agents without authority, and whether void or valid, if the party claiming under it cancels and surrenders it to the state for a valuable and good consideration and expressly waives all rights which he might otherwise have had to question its validity.

The act is left to operate in all other respects as though the contract had never existed.

"A party may renounce a constitutional provision made for his benefit and a law therefor, which provides for the transfer of property from one individual to another, *with the consent of the owner*, is not unconstitutional.

"The provision in the act relating to the city of New York which authorizes the commissioners of estimate and assessment to include in their assessment the whole of a lot when part only is required for the use of the street and vesting the title to the whole in the corporation, should, it seems, be so read and construed as to require the consent of the owner to the appropriation of the part not required for the public use, and therefore it is not unconstitutional."

Embry vs. Conner, 3d N. Y., 511.

This doctrine is reaffirmed in *Detmold vs. Drake et al.*, 46 N. Y., 318.

"The statute is assumed to be valid until some one complains whose rights it invades. *Prima facie*, and upon the

face of the act itself, nothing will generally appear to show that the act is not valid ; and it is only when some person attempts to resist its operation, and calls in the aid of the judicial power to pronounce it void, as to him, his property, or his rights, that the objection of unconstitutionality can be presented and sustained. Respect for the Legislature, therefore, concurs with well-established principles of law in the conclusion that such an act is not void, but voidable only ; and it follows as a necessary legal inference from this position, that this ground of avoidance can be taken advantage of by those only who have a right to question the validity of the act, and not by strangers. To this extent only is it necessary to go, in order to secure and protect the rights of all persons against the unwarranted exercise of legislative power, and to this extent only, therefore, are courts of justice called on to interpose."

Cooley Const. Lim., 5th Ed., p. 197.

Wellington, Petitioner, 16 Pick., 87, 96.

Hingham, etc., Turnpike Co. vs. Norfolk Co., 6 Allen, 353.

Heyward vs. Mayor, etc., of New York, 8 Barb., 486.

Matter of Albany St., 11 Wend., 149.

"Nor will a court listen to an objection made to the constitutionality of an act by a party whose rights it does not affect, and who has, therefore, no interest in defeating it."

Cooley Const. Lim., 5th Ed., p. 197.

People vs. Rensselaer, etc., R. R. Co., 15 Wend., 113.

"Any legislative act which does not encroach upon the powers apportioned to the other departments of the government, being *prima facie* valid, must be enforced, unless restrictions upon the legislative authority can be pointed out in the Constitution and the case shown to come within them."

Cooley Const. Lim., 5th Ed., p. 202.

Sill vs. Village of Corning, 15 N. Y., 297.

People vs. Supervisors of Orange, 17 N. Y., 235.

- Derby Turnpike Co. *vs.* Parks, 10 Conn., 522, 543.
 Hartford Bridge Co. *vs.* Union Ferry Co., 29 Conn.,
 210.
Holden vs. James, 11 Mass., 396.
Adams vs. Howe, 14 Mass., 340.
Norwich vs. County Commissioners, 13 Pick., 60.

"When a law of Congress is assailed as void, we look in the national Constitution to see if the grant of specified powers is broad enough to embrace it; but when a state law is attacked on the same ground, it is presumably valid in any case, and this presumption is a conclusive one, unless in the Constitution of the United States or of the state we are able to discover that it is prohibited."

Cooley Const. Lim., 5th Ed., page 207.

"A law might be void as violating the obligation of existing contracts, but valid as to all contracts which should be entered into subsequent to its passage, and which, therefore, would have no legal force except such as the law itself would allow."

Cooley Const. Lim., 215.

In any such case the unconstitutional law must operate as far as it can,

In re Middletown, 82 N. Y., 196,

"and it will not be held invalid on the objection of a party whose interests are not affected by it in a manner which the Constitution forbids."

Cooley Const. Lim., 5th Ed., 215.

"But if I could rest my opinion in favor of the constitutionality of the law on which the question arises, on no other ground than this doubt so felt and acknowledged, that alone would, in my estimation, be a satisfactory vindication of it.

"It is but a decent respect due to the wisdom, the integrity, and the patriotism of the legislative body by which any law is passed, to presume in favor of its validity, until its violation of the Constitution is proved beyond all reasonable doubt."

Ogden vs. Saunders, 12 Wheat., 213.

See also

Adams vs. Howe, 14 Mass., 340.

"The constitutionality of a law, then, is to be presumed because the Legislature, which was first required to pass upon the question, acting, as they must be deemed to have acted, with integrity, and with a just desire to keep within the restrictions laid by the Constitution upon their action, have adjudged that it is so."

Cooley Const. Lim., 5th Ed., 219.

"The presumption always is that the Legislature has kept within the legitimate scope of its authority and except in cases, where, upon the most careful and deliberate examination, it is manifest that the true limits of legislative power have been exceeded, the act will not be pronounced void."

Williamson vs. Carlton, 51 Maine, 453.

"A statute will not be declared unconstitutional on the application of a mere volunteer, or person whose rights it does not specifically affect. This will only be done in a proper case where some person seeks to resist the operations of the statute and calls in the judicial power to pronounce it void as to him, his property, or his rights."

Jones et al. vs. Black et al., 49 Miss., 541.

"If the act be unconstitutional, private parties cannot interfere by bill to have it so declared, unless on account of some damage to them; injury to the public peace or interests of the territory to be incorporated is not sufficient."

Smith vs. McCarthy, 50 Pa. St., 359.

VIII.

If the contract with the Bridge Company is material to this case, the claim that the relators cannot show that it had been canceled at any time before the judgment was rendered by the superior court is absurd.

The respondent town ties herself to a certain contract in which she has no interest, and insists that the obligations of this contract have been violated, but in the same breath she admits that this contract does not exist to-day, that since she set up the claim on its account it has been surrendered and canceled, and all constitutional defects in the law have been waived by the party in whose benefit it was written.

Can this town, not a party to the contract, claim more than the contracting parties might claim?

"Facts which have occurred since the issuing of the alternative writ may be pleaded in bar of the writ."

Merrill on Mandamus, Sec. 297; and if they may be pleaded in bar of the writ *a fortiori*, they may be pleaded in bar of a special defense if they occur before issue joined or before judgment.

Merrill on Mandamus, sec. 297.

IX.

The respondents contend that the mandamus should have been brought in the corporate name of the Bridge District, and that the treasurers of all the towns should have been joined in the proceeding. (See Return, paragraph 22.)

This writ is brought in obedience to and strictly in accordance with the provisions of Chap. 343 of the Special Acts of 1895, and especially of Sec. 7 of said act, which we quote as follows:

"SEC. 7. Said commissioners are empowered to make any and all orders and to do all things necessary for the construction and improvement of said highway, and the causeway and approaches appurtenant thereto, including all bridges necessary for the safety and convenience of public travel. The orders of said commissioners shall be obligatory upon the several towns named in section one of this act, and such orders shall be sufficient authority for the treasurer of each of said towns to pay to said commission or its treasurer any sum required to be paid by the towns named in such order. Said commissioners are authorized to apply to any court of competent jurisdiction, whether of state or the United States, for and in any manner appertaining to said work, and to procure the enforcement and execution of their orders, and the courts of this state are hereby fully empowered, upon proper proceedings brought by or at the instance of said commissioners or any interested party, to enforce by mandamus or otherwise the orders of said commissioners made under authority of this resolution."

The first section of the act simply establishes the district to be taxed as a body politic and corporate, with power to sue and to be sued. Glastonbury is an integral part of the corporation so formed.

The administration of the act and the power to compel this corporation to do its duty as therein set forth, was necessarily left to some one friendly to the law, clothed with full power in the premises. Sections 2 and 3 of the act provide for the organization of the board of commissioners, and in Sec. 3 we find the following provision:

"Actions may be brought against said board by service upon its secretary, and any judgment recovered therein shall be paid by said board in the same manner as herein provided for the payment of the expenses of repairs and maintenance. Said board shall annually report to said several towns the expenses incurred and paid by them during the preceding year."

The District as a corporation is opposed to the operation of the law, and the act would have been dead at its birth, if the claims of the counsel for the towns composing the district are correct.

The power of the commissioners to apply for a mandamus to enforce the order in question is coextensive with their power to make the order. The district or corporation is the respondent. The gentlemen are not quite bold enough to say that the act intends that this corporation may sue itself, if it see fit, but such is the import certainly of paragraph 22 of their return. Towns are by law obliged to keep highways and bridges, within their limits, in good and sufficient repair. The county commissioners in the several counties may order delinquent towns to comply with the law, and they may enforce their order and compel payment of expenses incurred. So, too, railroad commissioners, insurance commissioners, dairy commissioners, factory inspectors, etc., may order certain corporations and persons to comply with the laws of the state and secure the enforcement of these orders in the courts. The law in question (Sec. 7), says in so many words:

"The courts of this state are hereby fully empowered upon proper proceedings brought *by or at the instance of said commissioners or any interested party* to enforce *by mandamus* or otherwise the orders of said commissioners made under the authority of this resolution."

And, again:

"Said commissioners are empowered to make any and all orders," etc.

With regard to the claim that the mandamus should have been against the treasurers of all the towns, we submit that it is no less absurd and untenable than the point we have just left. The law provides (Sec. 7):

"The *orders* of said commissioners shall be obligatory upon the *several* towns," "and such orders shall be sufficient authority for the treasurer of *each* of said towns to pay to said commission or its treasurer any sum required to be paid by the towns named in such order."

"The writ must issue against him whose duty it is to do the act desired."

"The relator must prove his right to all he claims in the alternative writ."

"The writ may include any number of persons as respondents, if the duty is to be performed by all or by one or others. *If, however, the duties of the respondents are separate the writ will be refused.*"

Merrill on Mandamus, Sec. 24.

This is not a proceeding against the five towns or the treasurers of five towns, as they have a general and corporate duty to construct and maintain a bridge. It is a proceeding brought to require S. H. Williams, treasurer, to pay \$15.00 to the relators, as it is made his singular and separate duty under the law, and what the treasurers of the other towns may do or refuse to do, or be required to do, has no bearing whatever upon this purely ministerial and independent act required of the treasurer of the town of Glastonbury.

"A mandamus, to make the trustees of two townships discharge their duties relative to a certain public road, was refused because each township acted for itself, and the duties of the respective trustees were *entirely distinct.*" Merrill on Mandamus, Sec. 234; *State vs. Chester*, 10 N. J. L., 292.

"A mandamus was asked to compel a town and a city which had been carved out of the town to levy a tax to pay a judgment obtained on town bonds, which had been issued prior to the existence of the city. The writ was refused as to the city, because the duties of the two boards controlling the town and city were several." Merrill on Mandamus, Sec. 234a; *State vs. Beloit*, 20 Wis., 79.

There is no common or joint liability on the part of the other four towns to pay Glastonbury's share. The treasurer of the town of Hartford is as far from the reach of this proceeding in the eye of the law as is the treasurer of the town of Hartland. The treasurers of all the five towns have five separate and distinct ministerial duties to perform, five separate and distinct checks to draw. The five towns own five separate, distinct, and different sums of money to the relators. Had the five treasurers been joined as co-respondents in this application, it would clearly have been fatal to the proceedings, if it be good law that the performance of separate and distinct ministerial duties by different corporations cannot be required in the same writ.

X.

In answer to the claim advanced in section 21 of the respondent's reasons of appeal, we call attention to the following language of Judge Townsend (United States District Court for the District of Conn.):

"Where a drawbridge over a navigable stream constitutes a part of a public highway of a town, and is under its control, it is the duty of the town to provide a proper person to take charge of it, and open it, upon notice given, for vessels to pass through." *Greenwood et al. vs. the town of Westport*, 62 Conn., 575.

The courts of the state and the legislature have always treated highways over navigable waters (which include necessary bridges) as within the provisions of the law relative to the building and maintenance of other highways. (See Secs. 2668 and 2669, G. S., Revision of 1888.) And the fact that the bed of a navigable river is the property of the state makes no difference with the situation, nor with the powers and duties of towns concerning bridges constructed across such river.

XI.

With regard to the point made in paragraph 17 of the reasons of appeal, that there is no rule or standard for determining the proportion of the expense to be paid by each town, we will simply call the attention of the court to the language of the act: "The town of Hartford seventy-nine one-hundredths, etc." Sec. 4, Chap. 343, Act 1895, Record, p. 75.

Here we have express power given to the commissioners to apportion the expense of the ordinary support and maintenance upon the five towns according to the proportion "of said towns under the provision of this resolution."

XII.

The relators are clearly entitled to the favorable judgment of this court upon every point raised in the record.

The several questions raised by the respondent in this case, though presented in good faith and with great skill, are all answered by elementary principles of law which the courts of last resort have long since put beyond change or criticism.

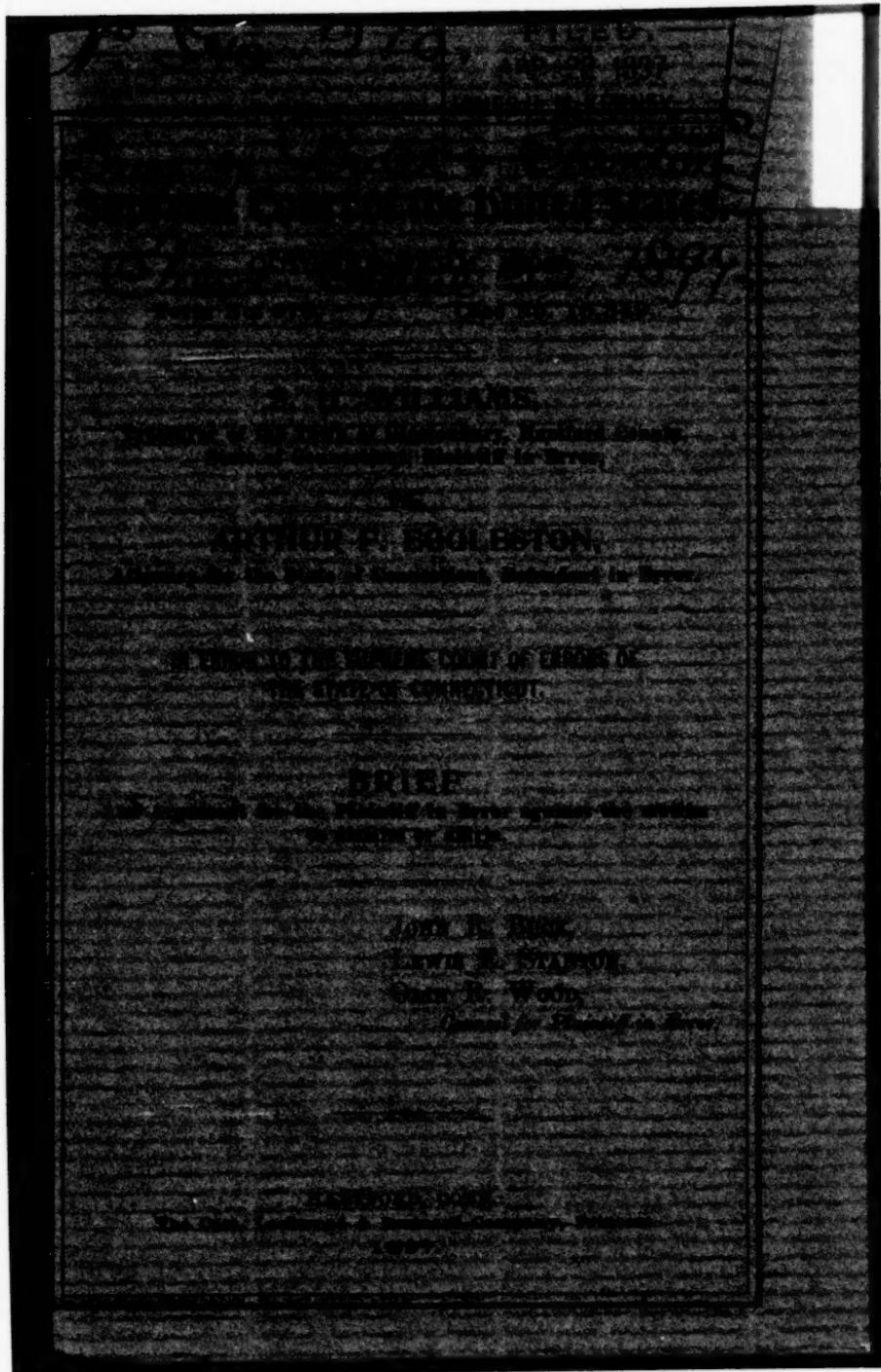
The act of 1893, by the terms of which the state assumed control of the East Hartford bridge, was in direct opposition to the policy of the state.

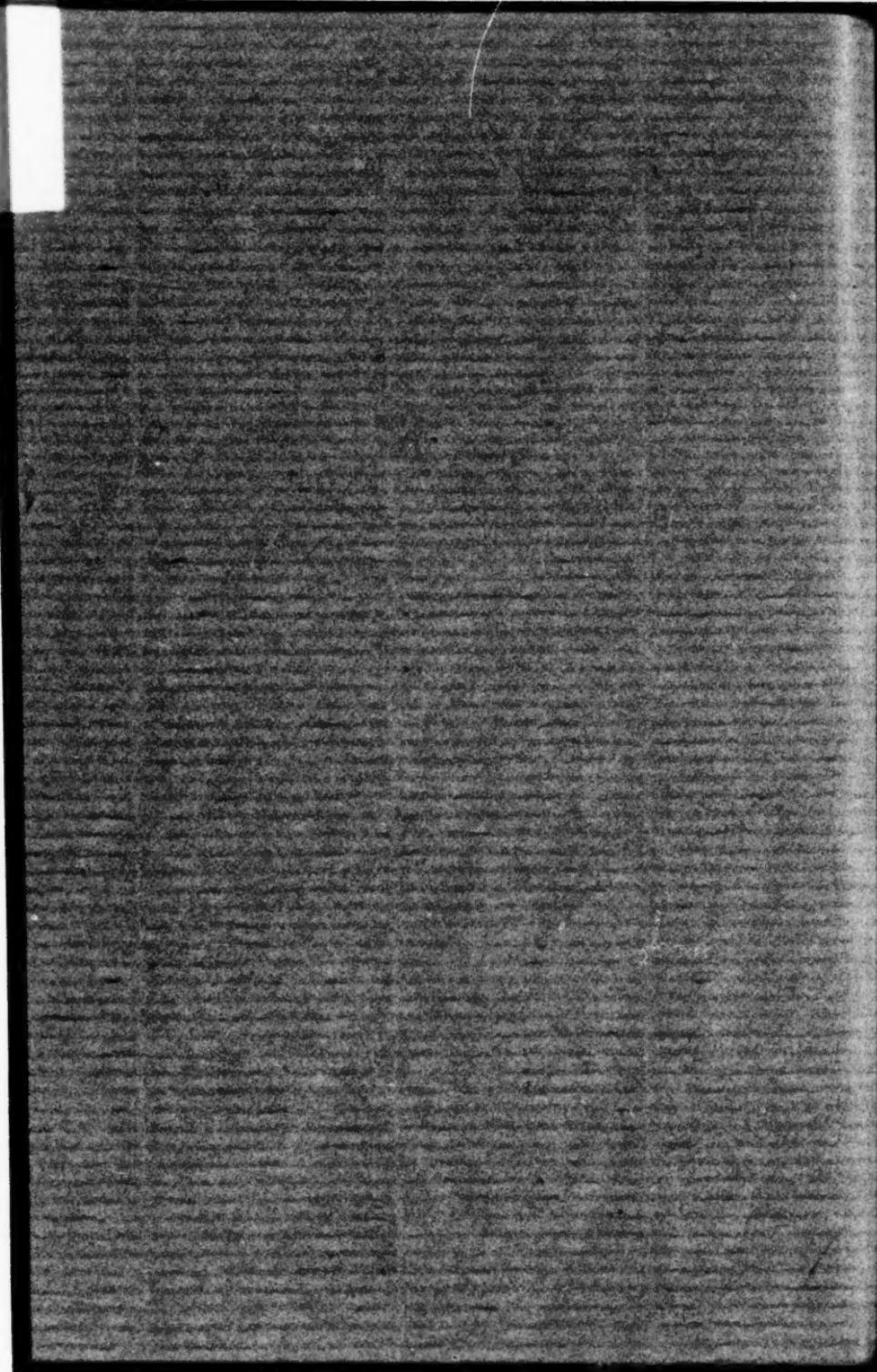
Adroitly written and adroitly passed it gave to a great municipality abundantly able to build and repair her highways special and unprecedented aid in this regard from the common treasury, leaving the poor communities with greater needs to their own resources under the general laws. It took a mile of public road in the town of East Hartford, and made it a state charge. It took one bridge from many across the same river, and if counsel for the respondent are right in their interpretation of this act, it opened the door to the state treasury and invited all the bridge-builders in the country to walk in and help themselves. It ignored every principle of justice and equality in taxation. It gave to Hartford, the wealthiest city in New England of its size, free transportation across the Connecticut river, and left the people of Enfield, Suffield, East Windsor, Windsor, Middletown, and Portland, to ford that same river, or pay toll.

The state might as properly have built a court-house, a jail, or a casino for Hartford, as this ornamental promenade across the Connecticut river.

The General Assembly of 1895 speedily and peremptorily repealed this unjust law which the respondent now clings to, and put the expense of repairing Hartford and East Hartford highways where it belongs, as long as it is made the duty of other towns in the state to repair the highways within their limits.

But the General Assembly of 1895 was most careful to save the honor of the state in her relation to the hasty and unwarranted conduct of her agents under the Act of 1893, and to pay in full all claims of The Berlin Iron Bridge Co. and all other claims made by any person on account of this invalid contract. All these claimants have been heard, and all their claims have been satisfied and discharged, and the respondent is manifestly as far from the law of 1893 and all things done under it as though it had never existed.





Supreme Court of the United States.

OCTOBER TERM, 1896.

Term No. 570.

Case No. 16,349.

S. H. WILLIAMS, Treasurer of the Town of Glastonbury,
Hartford County, State of Connecticut,

Plaintiff in Error.

vs.

ARTHUR F. EGGLESTON, Attorney for the State of
Connecticut,

Defendant in Error.

BRIEF AND ARGUMENT OF THE PLAINTIFF IN ERROR AGAINST THE MOTION OF THE DE- FENDANT IN ERROR, TO DISMISS OR AFFIRM.

The defendant in error has filed a motion to dismiss this case from the docket on the ground that the record presents no federal question for the consideration of the Court, and that this Court has no jurisdiction of the case for that reason. A motion to affirm the judgment of the Court below is joined with the motion to dismiss. The record presents several federal questions. They relate to the attempt of a state to take the property of its citizens without due process of law; to

impair the obligations of its own contract, and to impose the burdens of taxation in an unequal manner.

STATEMENT OF THE CASE.

Prior to 1887 the State of Connecticut had the care, maintenance, and control of the bridge and causeway described in the complaint (see Exhibit "A," printed record, pages 9-10-11), and up to that time no town or city had been charged with their maintenance. In 1888 the State temporarily shifted the burden of maintaining the highway which this bridge and causeway formed, from itself, by chartering a company to maintain it, and to collect toll and reimburse itself for the outlay.

(Private Laws of Conn., Vol. 1, page 254.)

On May 19, 1887, the State passed an act making said bridge and causeway a free public highway, and providing that certain towns therein named should maintain the same after having purchased the franchise and other property belonging to the Toll Bridge Company. The towns were to maintain this highway by officers of their own choosing, the first selectman of each of the towns constituting a board for that purpose.

(See Exhibit "10," page 60, Printed Record.)

(See also Section 7 of said act, page 62 of the printed record, for provisions relating to the care of said highway by the local officers of the towns.)

Under this act said town paid for the property of the Toll Bridge Company the sum of \$210,000 (see Exhibit "A," Printed Record, page 12), of which the State paid \$84,000.

After these towns had paid their full share of said sum of \$210,000 the General Assembly passed an act, approved June 29, 1893, being Public Acts of Connecticut, 1893, Chapter 239, page 395; which provided that thereafter the highway which included said bridge and causeway, should "be maintained by the State of Connecticut at its expense." The act

also repealed all of the preceding acts inconsistent with it, and provided for the appointment of a board of three commissioners for the care, maintenance, and control of the highway. The commissioners were duly appointed, and thereafter the State continued to maintain said highway and bridge until 1895, when the acts herein complained of were passed.

(The Act of 1893 appears in full in another part of this brief.)

The commissioners appointed under this Act of 1893, on the 13th day of November, 1894, acting for and on behalf of the State of Connecticut, made a contract with the Berlin Iron Bridge Company for the construction of a new steel bridge over Connecticut River where said highway was located, at a cost of \$325,900. This contract was made by said commissioners under authority of said act on June 29, 1893. (See Exhibit "L" Printed Record, pages 23 and 34.) While this contract was being executed, but before the former bridge had been removed, it took fire and, on May 17, 1895, was totally destroyed.

Soon afterwards, the General Assembly passed an act, approved May 24, 1895 (Printed Records, page 57), which repealed the act approved June 29, 1893, by which the State had assumed the maintenance of the highway, including the bridge, and under the authority of which, the contract for the construction of a new bridge had been made. The act also provided that "From and after the passage of this act, the towns of Hartford, East Hartford, Glastonbury, South Windsor, and Manchester shall, except as hereinafter provided, maintain the highway across the Connecticut River where the bridge formerly conducted by the Hartford Bridge Company, as a toll bridge, now is; and across said bridge and across and along the causeway and approaches appurtenant to and connected therewith." The act practically abrogated the contract of November 13, 1894 (Exhibit "I"), and re-

pudiated the obligations of the State growing out of it, to construct the bridge, although it provided for the appointment of commissioners to hear and determine all claims arising under and by virtue of any contract made and executed by the commissioners appointed under the act approved June 29, 1893, with any party, particularly with the Berlin Iron Bridge Company of Connecticut. (See Exhibit "8," Printed Record, page 58.) Afterwards the General Assembly passed a special act, approved June 28, 1895, which declared that said towns of Hartford, East Hartford, Glastonbury, Manchester, and South Windsor were a body politic and corporate, "under the name of the Connecticut River Bridge and Highway District, for the construction, reconstruction, care, and maintenance of a free public highway across the Connecticut River at Hartford," etc. The act also designated the proportion of the extent of maintenance of said highway which each of the towns should pay. (See Exhibit "B," Printed Record, page 52.)

This act had one special feature, which up to the time of its passage was unknown in the legislation of the State. It provided for and appointed eight commissioners, to whom authority was given to enforce the provisions of the act, and also of the act approved May 24, 1895. (Exhibit "8.") They also had power to issue bonds which should be a charge upon the several towns (see Section 4, Exhibit "B," Printed Record, page 53). Up to this time the General Assembly had never before attempted to take care of or maintain any of the highways in the State by its own appointed agent. It had often imposed duties upon towns relative to highways, some of them of an extraordinary nature, but had uniformly left the town to discharge those duties by their own chosen officers. Such was the course pursued by the law of May 19, 1887. (Exhibit "X," Printed Record, page 60.) This Act of May 19, 1887, has been referred to by the counsel for the defendant in error as affording ground for claiming that the five towns

named in the act were specially benefited by the construction of this bridge. But this act has no connection with and forms no part of the Act of May 24, 1895, or of the special act of June 28, 1895, except to afford a description of the highway, the care of which is placed upon the five towns, which appears in the decree of the Court passed upon the report of the Commissioners appointed under said act (being Exhibit "A"), and is found on page 9 of the Printed Record. The Act of 1887 was repealed by the Act of June 19, 1893, and thereafter ceased to exist or have any binding force as a public law of the State of Connecticut. Neither the Act of May 24, 1895, or of June 28, 1895, contained any provision for the finding of special benefits to these towns in connection with said highway. This Act of 1887 provided that the local officers of these towns should carry out the improvement necessary to make this highway a free public highway, but the two acts of 1895 contained no such provisions.

The Act of June 28, 1895, provides a novel and hitherto unknown process of obtaining money and property from the towns named in the act, and from their citizens.

On November 16, 1895, the treasurer of the town of Glastonbury (plaintiff in error), having refused to pay a sum of money demanded of him by said State Commissioners for expenses incurred in connection with said highway, the Commissioners commenced the present proceedings for the purpose of compelling payment. The case was heard by the Supreme Court of Errors of the State of Connecticut at the May Term, 1896, on an appeal from a *pro forma* judgment, which had been rendered by the Superior Court for Hartford County against the plaintiff in error. (Printed Record, page 47.) A majority of the court decided adversely to the claims of the plaintiff in error. A minority, consisting of Andrews, Chief Justice, and Associate Judge Hamersley held that the Act of June 28, 1895, is invalid, so far as it relates to the appoint-

ment of commissioners by the State to perform the duties heretofore performed by town officers chosen by the towns themselves. (Printed Record, pages 85 to 99.) The case is before this court on a writ of error brought from said decision on July 16, 1896. The majority and minority opinions are made a part of the record.

CLAIMS OF THE PLAINTIFF IN ERROR.

The plaintiff in error makes these claims, which grow out of the record and are set forth in the assignment of errors on pages 69, 70, and 71 of the Printed Record.

1st. That the questions here raised are federal questions, and relate to the construction of the federal constitution.

2d. That the contract of November 13, 1894 (Exhibit "I," Printed Record, page 23), was a valid contract, and that the temporary bridge called for on May 18, 1895 (see page 36 of Printed Record), was constructed under said contract. These questions are raised in the first and second assignment of errors.

3d. That the two acts of May 24, 1895 (Exhibit "8," Printed Record, page 57), and June 28, 1895 (Exhibit "B," Printed Record, page 52), and the orders and requisitions of the Commissioners passed thereunder, are in violation of the Constitution of the United States and of the 10th Section of Article I thereof, because they impair the obligations of said contract of November 13, 1894. This question is raised in the third, fifth, sixth, seventh, and ninth assignment of errors.

4th. That said two acts of May 24, 1895, and June 28, 1895, and the orders and requisitions of the Commissioners thereunder, are in violation of the Constitution of the United States and of Section 1 of the 14th Amendment thereof, be-

cause they provide for ways and means of obtaining money and other property from the plaintiff in error, and from the town of Glastonbury and its citizens and taxpayers by a process that is not due process of law; and because they deprive the town of Glastonbury and the plaintiff in error, who is its treasurer, and the citizens and taxpayers of said town, of property without due process of law. This question is raised in the 10th, 11th, 13th, 14th, and 16th assignment of errors.

5th. That the two Acts of May 24, 1895, and June 28, 1895, and the orders and requisitions of said commissioners thereunder, are in violation of the Constitution of the United States and of Section 1, Article 14, of the amendments thereof, because they deny to the plaintiff in error, being treasurer of the town of Glastonbury, and to the town of Glastonbury and the citizens and taxpayers thereof the equal protection of the laws. This question is raised in the fourth assignment of errors.

I.

The question whether said acts of May 24th and June 28, 1895, as raised in the record, constitute due process of law, is a federal question.

The public act approved May 24, 1895 (Exhibit "S," page 57, Printed Record), and the private act approved June 28, 1895 (Exhibit "B," page 52, Printed Record), taken together, are an attempt to take the property of the taxpayers of Glastonbury and of its treasurer, without due process of law. This is a federal question. It was distinctly raised as a federal question and so argued in the court below (see 15th-21st and 23d paragraphs of the Defendant's Return, pages 18, 20, and 21 of the Printed Record). (See also paragraph 16 of the assignment of errors in the "Respondent's Appeal" to the Supreme Court of Errors of the State of Connecticut, Printed

Record, page 65.) This question is raised in the 10th, 11th, 12th, 14th, and 16th paragraphs of the "Assignment of Errors," accompanying the writ of error by which the case is brought to this court. (See pages 70 and 71, Printed Record.) The decision of the majority of the judges in the court below on this question may be said to have a twofold application. It held that the acts in question do not violate Article 14, Section 1, of the Federal Constitution, which provides that no state shall "deprive any person of life, liberty, or property, without due process of law." And it also held that the acts are not in violation of the Constitution of the State of Connecticut, nor of Section 12, Article 1, containing a provision similar to that which is found in the Federal Constitution.

If the decision of the court below upon this point can be said to apply to the State Constitution at all, it does not follow that it did not also apply with full force to Article 14 of the Federal Constitution, and it cannot be said that no decision of a federal question appears in the record, and that although the two constitutions contained similar language in reference to the same subject the decisions of the court below can only be applicable to the State Constitution.

In the opinion adopted by a majority of the court below this question is treated as a federal question and decided adversely to the claim of the plaintiff in error (see p. 83, Printed Record). We shall have occasion to review this part of the opinion hereafter, but we quote it here for the purpose of showing that the question now being considered is a federal question, and was so considered by the court below. It appears from the record that the question whether Article 14, Section 1, of the Amendments to the Federal Constitution was violated by the passage of said act, was raised by the plaintiff in error at every stage of the pleadings, that it was treated as a federal question by a majority of the court below.

We, therefore, assume that the Court will hold that this is a federal question, and will take jurisdiction of the cause.

II.

The contract of November 13, 1894 (Printed Record, page 23), was a valid contract, and the two acts of May 24, 1895 (Printed Record, page 57), and June 28, 1895 (Printed Record, page 52), and the orders and requisitions of the Commissioners thereunder are in violation of the Constitution of the United States and of the 10th section of Article One thereof, because they impair the obligations of said contract of November 13, 1894.

We will next consider the allegations of fact upon the record which relate to the impairment of the obligation of the contract of the Berlin Iron Bridge Company and the State of Connecticut, and the violation of Section 10, Article 1, of the Constitution of the United States.

For convenience of reference we here insert Chapter 239, of the Public Acts of Connecticut of 1893.

"Chapter CCXXXIX -- An Act concerning the Hartford Bridge. Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. The highways across the Connecticut River at Hartford, where the present bridges now are, as laid out and established in accordance with the provisions of Chapter CXXVI of the Public Acts of 1887, together with said bridges, and the causeways, and approaches appurtenant to, and connected therewith, shall hereafter be maintained by the State of Connecticut at its expense.

Section 2. The Governor at the present session of the General Assembly, shall appoint three commissioners, with the consent of the Senate, one for the

term of two years, one for the term of four years, and one for the term of six years, who shall constitute a board for the care, maintenance, and control of said highways and bridges, and, upon the expiration of their several terms of office, their successors shall be appointed in like manner for the terms of six years from the time of appointment, and the expense of repairing and maintaining said highways and bridges shall be *incurred by said Board of Commissioners on behalf of the State*, and shall be reported by said boards from time to time, to the Comptroller of the State, who shall audit the bills for the same, and draw his order for the payment thereof on the Treasurer of this State, by whom said orders *shall be paid from the State treasury*.

Section 3. All causeways and other real estate used in connection with said bridges, or for the maintenance and protection of said causeways, shall be considered to be, under the provisions of this act, as appurtenant to said bridges, and the highway across the same.

Section 4. All acts and parts of acts inconsistent herewith are hereby repealed."

Approved June 29, 1893.

Public Acts, State of Connecticut, 1893, p. 395.

The allegations of fact upon the record which relate to the impairment of the obligations of the contract of the Berlin Iron Bridge Company, and the State of Connecticut, and the violation of Section 10, Article 1, of the United States Constitution are contained in:

Paragraphs 5, 6, 7, and 8 of Defendant's Return, pages 15 and 16, Printed Record, as amended in agreement of facts by counsel, Printed Record, page 48.

Paragraphs 9, 10, 11, and 12 of Defendant's Return, pages 17 and 18, Printed Record.

Judgment file Superior Court, page 47, Printed Record.

Paragraphs 4, 5, 6, and 8, Respondent's Appeal, page 64, Printed Record, and opinion Supreme Court of Error of Connecticut, Printed Record, page 83.

We maintain —

1. From the alleged facts, the question of impairing the obligations of contract between the Berlin Iron Bridge Company and the State of Connecticut, in violation of Section 10, Article 1, of the Constitution of the United States, appears on the records of this Court.
2. That the question so appearing on the Record of this Court is a Federal question.
3. That said question is so accompanied by allegations of fact as appear of record, that this Court will hold that a Federal question is presented.

The Act of 1893, approved May 24th, impairs the obligation of the contract between the Berlin Iron Bridge Company and the State of Connecticut, and is therefore in violation of the Constitution of the United States, and absolutely null and void.

Chapter 239, Public Acts of 1893, provides:

- 1st. That certain highways, bridges, causeways, and approaches shall be maintained by the State of Connecticut at its expense.
- 2d. That a Board of Commissioners shall be appointed who shall have the care and control of said highway and bridges.
- 3d. That the expense of repairing and maintaining said highway and bridges shall be incurred by said Board of Commissioners.
- 4th. That the expenses incurred by the said Board of Commissioners for the repairs and maintenance of said highways and bridges shall be paid by the Treasurer of the State from the State treasury.

The commissioners appointed under the Public Act of 1893 performed the duty of "care, maintenance, and control" of

said highway on behalf of the State until the passage of the Public Act of May 24, 1895, which by its terms repealed the Public Act of 1893, and put the maintenance of said highway upon the towns of Hartford, East Hartford, Glastonbury, South Windsor, and Manchester.

During the period while the commissioners were acting in behalf of the State, viz.: on November 13, 1894, they made a contract in behalf of the State with The Berlin Iron Bridge Company (see Exhibit "I," Printed Record, page 23) to build a new bridge across the river, and said company immediately thereafter began the performance of said contract.

On May 17, 1895, the existing bridge was wholly destroyed by fire, and on the following day the commissioners directed The Berlin Iron Bridge Company to complete the temporary bridge as contemplated by said contract, which said company at once began to do. (Printed Record, page 36.) Such was the condition of things relating to said highway when the General Assembly passed the Public Act of May 24, 1895.

The object of that act was to put the maintenance of the highway, including the bridge, upon the five towns named therein, and also to get rid of the contract of the commissioners in behalf of the State with The Berlin Iron Bridge Company, to build a bridge across the Connecticut River.

The act compels The Berlin Iron Bridge Company to go to the court to establish its validity; and also provides for a commission to hear and determine all legal claims and demands arising under or by virtue of said contract, *not to exceed forty thousand dollars.*

The Act of 1895 is an attempt to destroy the contract known as Exhibit "I," which was in force, and being executed when said act was passed, and this effect was sought to be accomplished by the repeal of Chapter 239, Public Act of 1893, by Section 1 of said Act of 1895.

The passage of the Public Act of May 24, 1895, and the Special Act of June 28, 1895, by the General Assembly, impaired the obligation of the contract of the State with The Berlin Iron Bridge Company, and, consequently, those acts are null and void.

The Act of May 24, 1895 (repealing the act of June 29, 1893), requires one of the contracting parties, The Berlin Iron Bridge Company, to go to court to prove that the act under which the contract was made conferred authority upon the agents of the other contracting party, the State, to make such a contract, when the subject matter of said contract, the building of a new bridge, at the very time the contract was made, was an obligation resting on the State under said Act of 1893, which the State was bound to perform. In substance, the contract was an agreement to do for the State just what the State itself on the date of the contract was bound to do by law.

The effect of the Act of May 24, 1895, is to compel a party to a valid contract to prove its validity in court, when the other contracting party is, by the law of the State, bound to do what he has contracted to have done.

It is submitted that no such law existed in this State at the time of the execution of the contract, and the passage of the act put an additional burden on the party seeking to enforce the contract and consequently impaired the obligation of the contract. The obligations of a contract are, that the contractor shall have the right under the law to have his contract enforced or performed, or, failing to have it enforced and performed, he shall recover in the courts of the State *the full amount of damages that he is able to prove he has suffered by reason of breaking the contract.*

In the case of Walker vs. Whitehead, 16 Wallace, 317, Mr. Justice Swayne says:

"The laws which exist at the time and place of the making of a contract, and where it is to be performed, enter into and form a part of it. This embraces alike those which effect its validity, construction, discharge, and enforcement. Nothing is more material to the obligation of a contract than the means of its enforcement. The ideas of validity and remedy are inseparable, and both are parts of the obligation which is guaranteed by the Constitution against impairment."

And in Wolff vs. New Orleans, 103 U. S., 367, Mr. Justice Field says:

"The prohibition of the Constitution against the passage of laws impairing the obligation of contracts, applies to the contracts of the State, and to those of its agents acting under its authority, as well as to contracts between individuals. And that obligation is impaired in the sense of the Constitution, when the means by which a contract at the time of its execution could be enforced, that is, by which the parties could be obliged to perform it, are rendered less efficacious by legislation operating directly upon those means."

In the case of Fletcher vs. Peck, 6 Cranch, 135, Chief Justice Marshall says:

"When, then, a law is in its nature a contract, when absolute rights have vested under that contract, a repeal of the law cannot divest those rights; and the act annulling them, if legitimate, is rendered so by a power applicable to the case of every individual in the community."

And in Sturges vs. Crownshield, 4 Wheaton, 200, Chief Justice Marshall says:

"The principle was the inviolability of contracts. This principle was to be protected in whatever form it was assailed. To what purpose enumerate the particular modes of violation which should be forbidden, when it was intended to forbid all?"

See also Miller on the Constitution, pages 530, 539, 540, and 541.

The Act of May 24, 1895, provides a new remedy, and limits the amount of damages which The Berlin Iron Bridge Company may recover, to \$10,000.

It supplies a remedy for the breach of the contract, but it is not the full remedy which law requires. Under the law as it was when the contract was made with The Berlin Iron Bridge Company, for a breach of the contract, the company had the right to recover all the damages it could prove it was entitled to, but under this act it can recover only \$10,000.00 in any event.

In the case of the Planter's Bank vs. Sharp, 6 Howard, 327, Mr. Justice Woodbury says:

"One of the tests that a contract has been impaired is, that its value has by legislation been diminished. It is not, by the Constitution, to be impaired at all. This is not a question of degree, or manner, or cause, but of encroaching in any respect on its obligation, dispensing with any part of its force."

And in Ogden vs. Saunders, 12 Wheaton, 320, Mr. Justice Trimble says:

"As in a state of nature the natural obligation of a contract consists in the right and potential capacity of the individual to take or enforce the delivery of the thing due him by the contract, or its equivalent; so, in the social state, the obligation of a contract consists in the efficacy of the civil law, which attaches to the contract, and enforces its performance or gives an equivalent in lieu of performance. From these principles it seems to result as a necessary corollary, that the obligation of a contract made within a sovereign state, must be precisely that allowed by the law of the state, and none other."

"The laws which exist at the time and place of the making of a contract, and where it is to be performed, enter into and form a part of it. This embraces alike those which effect its validity, construction, discharge, and enforcement. Nothing is more material to the obligation of a contract than the means of its enforcement. The ideas of validity and remedy are inseparable, and both are parts of the obligation which is guaranteed by the Constitution against impairment."

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In the case of the Planter's Bank vs. Sharp, 6 Howard, 327, Mr. Justice Woodbury says:

"One of the tests that a contract has been impaired is, that its value has by legislation been diminished. It is not, by the Constitution, to be impaired at all. This is not a question of degree, or manner, or cause, but of encroaching in any respect on its obligation, dispensing with any part of its force."

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A legislative act equivalent to a contract which is perfected, requiring nothing further to be done in order to its entire completion, is a contract executed, and whatever rights are thereby created, a subsequent legislature cannot impair.

Trustees Bishop Fund vs. Rider, 13 Conn., 94, 95, 96.

The State is under the same obligation as an individual to fulfill its contract.

Commonwealth vs. New Bedford Bridge, 2 Gray, 339 (350).

A party to a contract cannot pronounce its own deed invalid, although that party be a sovereign state.

Fletcher vs. Peck, 6 Cranch, 87 (*supra*).

The prohibition of the Constitution embraces all contracts executed or executory between private individuals or a state and individual or corporations, or between the states themselves.

Green vs. Biddle, 8 Wheaton, I (93).

The prohibition of the Constitution against the passage of laws impairing the obligations of contracts apply to the contracts of the State and those of its agents as well as to contracts between individuals.

United States vs. New Orleans, 103 U. S., 358.

If a contract when made was valid by the Constitution and laws of the State as there expounded by the highest State authority, no subsequent action by the State legislature or judiciary can impair its obligation.

Havemeyer vs. Iowa Co., 3 Wall., 294.

In 1876 the General Assembly of Louisiana passed an act purporting to relieve the city of New Orleans from its

obligation on certain bonds. In Louisiana vs. Pillsbury, 105 U. S., 300, Mr. Justice Field characterized the transaction in the following language:

"If the provisions of this act nullifying the pledges of the Act of 1852 are valid the consolidated bonds are virtually destroyed; no taxation is allowed to raise funds for them; their payment, therefore, would be so uncertain as to render them practically valueless. The chance with premium bonds offered in their place of a favorable turn of the wheel in a lottery, would be a poor substitute for the levy of an annual tax for the payment of interest and principal. We shall not waste words upon the scheme thus developed to evade the just obligations of the city. Notwithstanding the declaration in its preamble that the act seeks from the creditors the indulgence necessary 'for the public well-being and the maintenance of the honor'. It is, so far as the consolidated bonds are concerned, tainted with the leprosy of repudiation."

The effect of said Act of 1895 is to abolish all remedies provided for the enforcement or violation of contracts, under Chapter 239, Public Act of 1893, and in place thereof substitute limited, inadequate, and arbitrary measures, which diminish the duty and burden of the State, and deny substantial rights of the other party to the contract.

Under the guise of a change of remedy it is sought to avoid a legal liability. The Act of 1895, approved May 24th, is "tainted with the leprosy of repudiation." When repudiation is sought by means of an act of State Legislature in violation of the Federal Constitution, will not this Court say again, as it has before said, "We shall never immolate truth, justice, and law, because a State tribunal has erected the altar and decreed the sacrifice."

The contract known as Exhibit "I" was a valid and existing one when this Act of 1895, May 24th, was passed.

The Act of 1893 provides that "the expense of repairing and maintaining said highway and bridges shall be incurred by said board of commissioners on behalf of the State."

Evidently "to maintain" means, relative to a legally-established highway by bridge across a river, to do whatever shall be needed to keep up such highway in a condition safe and convenient for public travel.

That would require the building of a new bridge whenever an old one could no longer be safely used, and did not meet the necessities of public travel.

By the terms of that act the complete control of said highway is conferred upon the commissioners; there appears no restriction on their power to act. Beyond question, the duty to rebuild the bridge, in case public convenience, necessity, or safety required it, is put on the State by the act.

In support of the claim that to maintain a bridge imposes the duty to rebuild, the following cases are cited:

- Mather vs. Crawford, 36 Barbour, 564.
Huggans vs. Riley, 125 N. Y., 91.
Commonwealth vs. Deerfield, 6 Allen, 456.

In the case of Huggans vs. Riley, the Court says:

"When the interests of the public of a town demand that its highway be made passable, the commissioner of highways has as much the implied power to effect that result by constructing a new bridge as he has the express power of doing so by repairing an old or replacing a destroyed bridge."

The State, in determining whether or not the bridge should be rebuilt, must necessarily reach such determination through the judgment of some agents, and what more natural and reasonable mode could the State adopt, than to submit the whole question to the jurisdiction, investigation, and determination

of the board of commissioners specially appointed for the "care, maintenance, and control" of the bridge in question.

Had the General Assembly intended to reserve any part of the control of said highway and bridge to itself, it would have put such reservation or restriction into the act.

Again, the necessity for the commission to act may arise when the Legislature is not in session. It is a matter which involves the public safety. This furnishes a strong reason why the whole power of determination should be conferred upon the commissioners.

It is admitted that the commissioners in making the contract acted in good faith. (Finding of Facts, paragraph 1, page 48 of Printed Record.)

The law provides that the highway across the Connecticut River "where the present bridges now are," shall be maintained by the State. This language evidently contemplates that hereafter those bridges may not be there. It therefore contemplates the substitution of a new bridge, which would constitute a part of said highways, in place of the old one, whenever it should be necessary to do so. The board had the "care, maintenance, and control of said highways and bridges" which were located "where the present bridges now are," and being charged with the care and maintenance, and having the control of those highways, they had the power by clear implication to substitute a new bridge for the old one, whenever the old one ceased to be sufficient for the purposes of the public travel thereon. This board having the care, maintenance, and control of the highway, were themselves the judges of when the highway needed repairing, and were also charged with the duty of rebuilding any part of it, when, in their opinion, it became necessary to do so. In constructing the new bridge it was their duty to provide for the safety and convenience of the public travel thereon.

The commissioners, having the power to rebuild, must also have the authority to determine the capacity and character of such bridge needed to adequately accommodate the amount of public travel over it; and also to take into consideration in deciding upon the plan of such bridge the probable increase of such travel, and all the conditions that may attend it in the immediate future.

The relators in their reply say, that the contract did not provide for a bridge as it was then constructed, that the old bridge could have been rebuilt for \$75,000, while the new bridge was to cost \$325,000. (See Relator's Reply, paragraph 14, Sections 1, 2, and 3, Printed Record, page 39.)

It is absurd to say that the board was obliged to rebuild the old wooden bridge as it had previously existed, to restore it piece by piece, timber by timber, without reference to increased travel, or the requirements of the public, in the way of electric cars, etc. Manifestly, it was their duty to construct such a bridge as was needed at that point, and to furnish the public with a structure that would accommodate all kinds of public travel, whether it would cost more or less than the old wooden bridge could have been built for. Accordingly, said board of commissioners executed the contract, which is known as Exhibit "1" in the defendant's return, and we say that the contract is a valid contract, and that said board had the power to make it.

The defendants in error claim that the before-mentioned Acts of 1895 are not void as impairing the obligations of the contract made by the State with the Berlin Iron Bridge Company, because for a consideration that company has, since the filing of the return in this case, discharged its claim against the State under said contract and canceled and surrendered the contract to the State.

The constitutional prohibition is: "No state shall pass any law impairing the obligation of contracts."

The effect of this prohibition is that such laws if passed by a state are null and void.

Assuming the act to have been void before the State made the settlement, the effect of the claim of the relator is that the settlement gave validity to act which before was void.

The Act of May 24, 1895, repeals the Act of 1893, under which a valid contract had been made to build the bridge by the State, and while that undertaking was in force and the work of construction was in progress; and also transfers the obligation resting on the State under the Act of 1893 to the five towns, and binds them to perform it.

The respondent, being one of the five towns directly affected by said act, has a pecuniary interest in the matter, and consequently has a right to raise the question of the unconstitutionality of the Acts of 1895 in this action which is brought to enforce a payment thereunder.

The question of the unconstitutionality of the act is to be decided with reference to the situation of the parties affected by the contract and the acts at the time the Act of May 29, 1895, was passed.

The Berlin Iron Bridge Company was executing the contract when the Legislature of 1895 convened. On the permanent structure the company had expended \$5,776.00, on the temporary bridge provided for by the contract the company had expended \$600.00 in labor, and had purchased about \$8,000.00 of material. By order of the commissioners of 1893 (attached to Exhibit "I" of respondent), dated May 18, 1895 (after the fire), the company was required to go forward and complete the temporary bridge, the language of the order being "under your contract of Nov. 13, 1894." The company completed the temporary bridge, and afterwards it was paid \$18,000.00 for it by the relators, acting for the State.

This was on December 13, 1895. In addition to this payment the company was awarded \$27,526.00 by the commission, provided in the act, for their claim under the contract of November 13, 1894. The account stands as follows:—

Amount of claim presented by Berlin Iron Bridge Company,	\$72,071.00
Amount awarded by commission un- der contract,	\$27,526.00
Amount paid the company for tem- porary bridge,	18,000.00—45,526.00
Difference,	\$26,545.00

(See paragraphs 5, 6, and 7, Finding of Facts.)

The temporary bridge was built under the contract, and in pursuance of the order of the commissioners of 1893, dated May 18, 1895. The material used, labor expended, and contract profit, must have been included in this amount. The sum of \$27,526.00 was awarded under the contract, and the total of the two was \$5,526.00 more than was permitted by the act approved May 24, 1895, the limit in that act being \$40,000.00. It, therefore, appears that the settlement as described in the record was not authorized by the act.

In *Louisiana vs. Pillsbury*, 105 U. S., p. 278, this Court said: "Legislation of a state thus impairing the obligations of contracts made under its authority is null and void; and the courts in enforcing the contracts will pursue the same course and apply the same remedies as though such invalid legislation had never existed."

The Acts of 1895 being null and void, it is not possible for any party in interest to waive or heal the violation to the Constitution of the United States.

An unconstitutional act cannot be cured by stipulation.

A void legislative act cannot be healed by agreement. When that legislative act is in collision with the Federal Constitution any attempted agreement of the parties to make such legislative act valid is as void and inoperative as the original offending act.

If a state should pass an act of attainder it would be absurd from the very nature of an attainder, for the parties affected thereby to stipulate that the act or attainder should have force in respect to them. The act violates Section 10, Article 1, Federal Constitution, and is void. The same would be true of an *ex post facto* law. And it is equally true of an act impairing the obligation of a contract. It is legally impossible for the parties to such an act by stipulation or agreement to give any force or power, or effect to the unconstitutional and void act.

The Act of 1895, approved May 24th, being null and void because in violation of the Constitution of the United States, it is competent for any party against whom that act is attempted to be enforced to invoke the protection of the Federal Constitution.

III.

The two acts of May 24, 1895 (Printed Record, page 57), and June 28, 1895 (Printed Record, page 52), and the orders and requisitions of the Commissioners made under the authority of said acts are in violation of the Constitution of the United States, and of Section 1 of the 14th amendment thereof, because they deprived the town of Glastonbury and the plaintiff in error who is its treasurer, and the citizens and taxpayers of said town, of property without due process of law.

The appointment of commissioners by the Legislature to perform the duties specified in the acts of May 24 and June

28, 1895, for the town of Glastonbury to perform, is a part of the process by which the property of the town of Glastonbury, its treasurer, and of its citizens, is to be taken for the purposes named in the act. But it is not "due process of law" within the meaning of the Federal Constitution. The appointment of commissioners by the Legislature for the purpose named was an attempt to take away from the town of Glastonbury the right of local self-government, and the right of performing such duties as the Legislature might impose upon it, through officers of its own choosing. Glastonbury was incorporated as a town in 1690, it having been prior to that time a part of the town of Wethersfield. With other towns of the state which existed prior to the adoption of the State Constitution in 1818, Glastonbury had certain rights as a municipal corporation, with which it has never parted. The State Constitution never took away those rights. On the contrary, it preserved them in the form which they existed before the Constitution was adopted. The right of local self-government and to choose its own officers for the purpose of administering that local self-government, constituted a part of those rights of the town of Glastonbury, which have existed since 1639, when the three towns of Windsor, Hartford, and Wethersfield (which then included Glastonbury), "on their own behalf appointed committees and magistrates, who, as a General Court, directed the affairs common to the three towns." (Minority opinion, Printed Record, page 90.) It is not claimed that the Legislature cannot impose duties upon these towns. That body must be the judge of what the towns must do relating to highways, within their own limits. They may be compelled to build public works which their own citizens might not approve of; but, being town duties, they must be performed by town officers, not state officers.

The minority opinion prepared by Chief Justice Andrews and concurred in by Justice Hamersley, has discussed this

subject with great clearness. A few extracts from that able opinion will illustrate the point here urged.

"The real difficulty is with the power of the legislature under the provisions of the State constitution to give the whole execution and control of duties and powers assigned to the town to persons in whose selection the towns have no agency, direct or indirect, and over whose conduct they have no control.

"It will be a surprising doctrine to the people of this State, even if only suggested that the constitution by the grant of legislative powers has conferred on the legislature the authority to take from them the management of their local concerns, and the choice of their own local officers." (Record, page 86.)

And, again, in speaking of towns in this State, Chief Justice Andrews uses this language:

"These corporations were governed by their own inhabitants in town meetings, and their affairs were managed by officers chosen by themselves, and who were always inhabitants of the town. And they provided in that instrument (the Constitution) that the rights and duties of all corporations should remain, as if the Constitution had not been adopted, except so far as therein restricted or limited." (Record, page 88.)

"This right of the inhabitants to themselves order the municipal duties assigned to the town was plainly one of those 'rights and privileges derived from our ancestors,' which the Constitution was adopted 'in order more effectually to define, secure, and perpetuate.' By the several articles of the Constitution above mentioned, that instrument intended to make sufficient provisions to that end. It did guarantee the perpetual existence of the several towns with selectmen to manage their local affairs, and a town clerk to record their doings at town meetings; although it left the variety and duties of the officers of the local police subject to legislative change." (Record, page 88.)

"The Legislature may regulate the conduct of the town corporation, may determine the local duties here

assigned to them, and in that sense the towns derive their powers from the Legislature, but the possession of some local duties and powers, the administration of such duties by themselves or their own officers is inherent in the towns, which the Constitution makes the basis of the new government, and the Legislature has no power to destroy this town. The Constitution assumed the existence of towns as local municipalities, and contemplates that they shall continue as they have hitherto been." (Record, page 94.)

"When, therefore, the Legislature has included within the municipal duties of Glastonbury, and the four other towns that are named, the maintenance of a highway described, it could not appoint the agents, who, on behalf of the town, were to exercise those duties and powers. The theory of the Constitution is that the several towns are of right entitled to chose whom they will have rule over them; and that this right cannot be taken away from them, and the electors and inhabitants disfranchised by any act of the Legislature, or of any or all of the departments of the State government combined." The People *ex rel.* Bolton vs. Albertson, 55 N. Y., 56.

See also the authorities on this point "In the minority opinion," page 96.

This point is discussed in the majority opinion of the court below in the following language:

"It has, undoubtedly, been the general policy of the State to leave the expense of public improvement for highway purposes to the determination of the municipal corporations within the limits of which the highway may be situated and to charge them only with such obligations as may be incurred in their behalf by officers of their own selection. But when the State at large, or the general public, have an interest in the construction or maintenance of such work, there is nothing in our Constitution or in the principles of natural justice upon which it rests to prevent the General Assembly from assuming the active direction of affairs by such agents as it may see fit to appoint, and

apportioning whatever expenses may be incurred among such municipalities as may be found to be especially benefited without first stopping to ask their consent."

Norwich vs. County Commissioners, 13 Pick., 60.

Rochester vs. Roberts, 29th N. H., 360.

Phila. vs. Field, 55th Pa. State, 320.

Simon vs. Northrop, 40th Pa. Rep., 560.

On against Legislation of this character American Cases

generally hold that no plea can be set up of a right of local self-government implied in the nature of our institutions. People vs. Draper, 15th N. Y., 532, 543; People vs. Flagg, 46 N. Y., 401, 404; Commonwealth vs. Plaisted, 148 Mass., 375; 19th Northeastern Reporter, 224.

It will be observed that ~~the~~^{The} opinion prepared by Judge Baldwin for the majority of the court below admits that it has been the general policy of the State to leave the expense of public improvement for highway purposes to the determination of the municipal corporations within the limits of which the highway may be situated, and to charge them only with such obligations as may be incurred in their behalf by officers of their own selection. The opinion also holds that there is nothing to prevent the General Assembly from "assuming the active direction of affairs by such agents as it may see fit to appoint." The general policy of the State is probably here correctly stated, but it might also have been said with equal truth that the Legislature has often designated the expense of public improvement which towns should assume, although it has left the completion of such improvement to the town officers appointed by the town. But we cannot consent to the conclusion which the majority of the court arrives at in the matter of the power of the Legislature to appoint state agents to discharge the duties which properly belong to town officers, and which have been their inherent right since 1639. In support of the position taken by the majority of the court be-

law, Judge Baldwin cites several cases. But upon a careful examination of the cases cited, it appears that they do not sustain the position taken in the majority opinion, but most of them do sustain the position which we now urge.

We call attention to the following cases cited in the majority opinion:

In the case of *The Inhabitants of Norwich vs. The County Commissioners of Hampshire*, 13 Pickering, 60, it appears that the Legislature of Massachusetts passed an act which provided that one-half of the expense of building a particular bridge should be borne by the county, and the other half by the town in which it was situated. The act provided that the bridge should be built by the local officers of the county, viz.: the County Commissioners, and the expense of the structure was to be met by the town and county by funds raised by local action of the two municipalities. In that case the duty was imposed and the discharge of it left to the local officers.

This decision is not adverse to the claim of the plaintiff in error, because it leaves the discharge of a public duty to the local officers chosen by the inhabitants of the county where the duty is to be performed. The act that we complain of imposes the duty, but provides for its discharge by officers not chosen by the inhabitants where the duty is to be performed, but appointed by the Legislature which imposes the duty.

The case of *Rochester vs. Roberts*, 29 N. H., 360, appears to have no application to the questions raised in this record.

Philadelphia vs. Field, 58 Pa. St., 320.

In this case the Court discussed an act requiring the city of Philadelphia to build a bridge over the Schuylkill River at South Street, and appointing a commission to build it, and to create a loan not to exceed \$600,000. The city was required to provide a sinking fund for the redemption of these bonds at the end of forty years.

This case lays down no principle adverse to the claim of the plaintiff in error. Philadelphia was required to build and maintain a bridge within its own limits, and no outside corporation was required to pay anything towards it.

The case of Wheeler's Appeal, 45 Conn., 306, cited in the majority opinion holds that "long continued legislative usage is of controlling weight upon the question of constitutionality of an act." There is no legislative usage in the history of the State of Connecticut that affords any precedent or sanction for the two acts of May 24 and June 28, 1895. An examination of the authorities cited in the opinion of the court shows that in one essential particular, viz.: the appointment of State Commissioners to perform a town duty, these acts are entirely without precedent. No usage of this kind exists. The case cited has no bearing on the question.

Simon vs. Northup et al., 40 Pac. Rep., 560. Oregon, June 3, 1895.

The facts in this case were substantially as follows: The city of Portland had issued its bonds for the care of certain bridges and ferries within its limits. A committee was appointed by this act to acquire these bridges and ferries in the name of the city of Portland, and to issue the city's bonds to raise money for their future care and maintenance, then to turn over the bridges and ferries to the county court to control as it saw fit. A county tax was to be laid to redeem the bonds issued by the city of Portland, also those issued by the committee in the city's name. The Court held the act unconstitutional so far as it required the county to pay for the bonds already issued by the city, but valid so far as it required the county to pay for the future maintenance of the bridges.

14 Colonial Rec., 176. Oct., 1773.

Cited in the majority opinion as being on page 605. In this resolution the town of Mansfield was ordered to build and maintain a bridge over the Natchaug River,

then in the town of Mansfield, "by ways and means that they shall judge proper." If they did not complete this work by the next January, a committee of three was appointed to build it and to report the cost to the next Assembly, "in order to their reimbursement in such way as shall appear to be just and right."

In the first instance the town was left to its own free will in building a bridge within its own limits, and the committee of three had no power by this resolution to bind the town in any way.

13 Colonial Rec., May, 1772.

This reference is to the following facts:

Three citizens of Norwich obtained private subscriptions to build a bridge in the town of Norwich, but the subscribers, when the bridge was completed, could not pay. The three citizens applied to the Legislature, which gave them liberty to set up a lottery to raise 600 pounds to pay for the bridge. The town was to appoint managers, under bonds, and the managers, under order of the town, were to apply the money towards the expense of the bridge already incurred, and to be incurred, and to report to the next Assembly.

This case embodies many of the precise principles for which the plaintiff in error is here contending. The town is allowed to raise the money itself, to appoint its own managers, and to give its own orders.

In this case the procedure is entirely different. Here the treasurer is asked to pay bills concerning which he knows and can know absolutely nothing on the order of commissioners, with whom he has no official connection.

14 Colonial Rec., 198, 1773.

Cited in the majority opinion as on page 630. The committee referred to in the case of the town of Norwich, 13 Colonial Rec., 610, was allowed to set up another lottery for the same purpose and under the same conditions, inasmuch as the 600 pounds raised by the former lottery had proved insufficient.

The majority opinion cites Vol. I, Private Laws, p. 285, as containing evidence of legislation which affords a precedent for the acts of 1895. That legislation was as follows:

"Resolved, That the inhabitants of the said town of Granby do build, and hereafter maintain, a good and sufficient bridge at their expense across said river at the place where said new road is laid and established, or at such other place eastward thereof as said highway may be altered unto by order of said County Court, upon the application now before them, as aforesaid."

In the case of Maynard vs. Hill, 125 U. S., 499, it appears that the territorial legislature of Oregon, upon the application of the plaintiff, passed an act dissolving the bonds of matrimony between Maynard and his wife, without notice to, or knowledge by his wife, who, with their children, had been left by him two years before in Ohio, under promise that he would return or send for them within two years.

The Court held that the act was constitutional, and Mr. Justice Field, in giving the opinion of the Court, said: "A long acquiescence in repeated acts of legislation on particular matters is evidence that those matters have been generally considered by the people as properly within legislative control."

As has already been shown, there has been no long acquiescence, no repeated acts of legislation on the particular matter of appointment of State agents to perform the duties of the selection of the towns.

The act complained of is the first and only act of its kind. It is without precedent.

Agawam vs. Hampden, 130 Mass., 528, 1881.

In this case it was decided that a legislature might authorize and require a county or a town to raise and appropriate money for any public use within its limits, or for the reimbursement of money already paid for such a use.

Hampden County had been authorized to build a bridge between Springfield and Agawam, and three commissioners were to be appointed by the local court

to determine what cities or towns in Hampden County were specially benefited, also their proportions. The commissioners appointed by the court placed the whole burden upon Springfield and Agawam.

The next legislature enacted that if the benefits to the two towns did not equal the cost of the bridge, then the county was to pay the two cities the cost of the bridge, less the benefits the two cities received. This act was upheld.

Kingman vs. Metropolitan Sewerage Com'rs., 153 Mass., 566.

In this case the court considered an act providing that particular towns should be assessed for the cost of a new system for the disposal of sewage. C. Allen, J. "It is within the proper province of the Legislature to determine where they (these burdens) shall rest."

The opinion does not state whether the sewage system affected all the towns which were assessed. Of course, if the system did affect all the towns which were assessed, the court was only laying down an acknowledged principle of law, which is not here disputed.

The judge who prepared the opinion alluded to certain authorities holding a different doctrine in the following language:

"The authorities cited by the respondents from Vermont, New Jersey, and Michigan show that different views of the legislative power prevail in those states. If the question was entirely new, these decisions would be entitled to and would have great weight with us; but they are not consistent with the views which we entertain of the powers vested in the Legislature by our own Constitution."

*Salem Turnpike and Chelsea Bridge Corporation
County of Essex et al., 100 Mass., 282. 1868.*

A statute which provides for laying out a road and bridge, and that a court should appoint commissioners to determine what cities and towns were specially benefited by the layout and in what proportions they should

pay the expenses of maintenance, is constitutional. This decision, whatever weight it may or may not have, does not touch the vital point in this case, which is that the Connecticut Legislature attempts to dictate as to the exact mode of payment by the towns. This case also directs that the commission shall be appointed by the local court, not by the Legislature.

It would be a mistake to judge our Constitution by that of Massachusetts.

The provision of the Massachusetts Constitution relating to the powers of a legislature touching these matters is as follows:

"Full power and authority are hereby given and granted to said General Court from time to time to make, ordain, and establish all manner of wholesome and reasonable orders, laws, statutes, and ordinances, directions, and instructions, either with penalties or without; so as the same be not repugnant or contrary to this Constitution, as they shall judge to be for the good and welfare of this commonwealth and for the government and ordering thereof, and of the subjects of the same."

Kingman Petitioners, 153 Mass., see p. 572.

It is enough to say that the Constitution of Connecticut contains no such clause. Towns under our system have the right to lay their own taxes. It is not due process of law to seize their funds without notice, or else subject the treasurer to imprisonment.

But it may be said that the majority of the court below has placed its construction upon the State Constitution, and that his court cannot review this decision, because that would not be a federal question. The reply to this suggestion is that the power to appoint its own officers to discharge such duties as might be imposed upon the town of Glastonbury belonged to

that town before the Constitution was adopted, and existed then, and still does exist independent of the Constitution. That instrument did not give the power. It defined it, and secured and perpetuated it more effectually; but it did not grant it. It follows, therefore, that so much of the Act of June 28, 1895, as appoints the State commissioners to discharge the duty imposed by it upon the town of Glastonbury, does not constitute due process of law, because it interferes with and destroys that power which the town has of discharging its town duties, whether self-imposed or otherwise, by officers of its own choosing. And it follows, also, that this question is unaffected by any construction of the State Constitution by the majority of the court below, since the process provided for in the act interferes with that power which exists independent of that instrument.

We quote some of the curious provisions of ancient codes, to show what powers towns had in the earliest days of this State or colony:

Connecticut Laws of 1643.

It is ordered that each town choose two surveyors yearly to look to the highways, who shall have liberty to call out every team and person fit for labor, in their course, one day every year, to mend the said highways; wherein they are to have special regard to those common highways which are betwixt town and town. The charge whereof is left to the particular towns for the present, to be ordered according to their own rules, and in case any surveyor shall not attend the said service by calling out the teams and persons aforesaid, where need is, he shall forfeit five shillings for every offense.

July 5, 1643.

Colonial Records of Conn., Vol. 1, page 91.

Ludlow's Code, 1650.

Whereas the maintaining of highways in a fit posture for passage according to the several occasions that

occur, is not only necessary for the comfort of man and beast, but tends to the profit and advantage of any people, in the issue—

It is thought fit and ordered that each town within this jurisdiction shall every year choose one or two of their inhabitants as surveyors, to take charge of and oversee the mending of the highways within their several towns respectively, who have power hereby allowed them to call out the several carts or persons fit for labor in each town two days, at least, in each year, and so many more as in their judgment shall be found necessary for the attaining of the aforementioned end, etc., etc.

Adopted by General Court, May, 1650.

Colonial Records, Connecticut, Vol. 1, pages 527, 528.

We have thus far spoken only in reference to that portion of the Act of June 28, 1895 (Printed Record, page 52), which appoints State commissioners to perform town duties. This is only a part of the process provided in the act for taking the property of the town and its taxpayers. Properly speaking, what has thus far been considered relates only to the officers who are to enforce and carry out the process. The process itself which these officers are to carry out and enforce mainly appears in Section 4 of said act. (See Printed Record, page 53.)

IV.

We say that a State statute authorizing this mandamus against the treasurer upon the facts stated in the record does not provide "due process of law," and that the State court in upholding it necessarily decided a federal question against the plaintiff in error.

The provisions in the two Constitutions, that of the State of Connecticut and of the United States, are in substance the same.

Thus the Connecticut Constitution provides as follows:

"He shall not be compelled to give evidence against himself nor be deprived of life, liberty, or property but by due course of law."

Article 1, Section 9, Conn. Constitution.

"No person shall be arrested, detained, or punished except in cases clearly warranted by law."

Article 1, Section 10.

"All courts shall be open, and every person for any injury done to him in his person, property, or reputation shall have remedy by due course of law, and right and justice administered without sale, denial, or delay."

Article 1, Section 12.

*

The language of the Federal Constitution is as follows:

The party shall not "be deprived of life, liberty, or property without due process of law."

Fifth Amendment, Constitution of the U. S.

Again:

"Nor shall any state deprive any person of life, liberty, or property without due process of law," nor deny to any person within its jurisdiction the equal protection of the laws.

Fourteenth Amendment, Section 1, Constitution of the U. S.

The court will see that the expressions "due course of law" and "due process of law" were intended to cover and protect the same rights.

No doubt the usual customs and forms long practiced and well known in particular cases may be held to be due process.

Thus in case of a delinquent collector of United States revenue a distress warrant may issue against him, signed by the solicitor of the treasury. A long and well-settled practice

in England and this country in revenue cases established a certain process as due process.

Murray vs. Hoboken Co., 18 Howard, 272.
Statutes Conn., Revision 1784, page 198.

Now, what is the complaint which the plaintiff in error makes? Just this: That he is summoned into court and threatened with the pains and penalties of a mandamus when the demand which he is expected to pay has not been determined except by State commissioners, nor funds to pay it provided by any process at all.

We use these terms advisedly. The only warrant which the treasurer has for the payment of these moneys is the simple order of the State Commissioners. Can it be seriously contended that this amounts to process of any kind?

Printed Record, page 55.

The legislature may doubtless determine by statute the proportions which these towns shall respectively bear. But this mandamus is not directed against the town. It is aimed at the treasurer. Judge Baldwin, speaking for the majority of the State court, says that the mandamus runs singly to the party who is bound to do the particular act commanded.

State vs. Williams, Treasurer, 68 Conn., 157.
Printed Record, page 84.

No notice whatever is to be given to the town before the demand is made upon the treasurer, and no opportunity afforded to the town officers to supply the treasurer with the funds for these purposes.

In a case where a Probate Court had by mistake granted administration upon the estate of a living person, the question arose whether certain notices given under a State statute were sufficient or due notice. This court held that it is not

bound by the State statute upon that question, but will look into the State statute and construe it.

Scott vs. McNeal, 154 U. S., 45.

According to the reasoning of the majority of the State court, the treasurer is to take from any town moneys in his hands, at any time, upon the peremptory demand of State commissioners, enought to satisfy that demand, whatever it may be, not exceeding the proportion of the town, and pay it over. He is to do this, although he may know that every dollar in his hands was raised by the town for other purposes, and is needed for those purposes.

We say that no legislature has the right to deal in this manner with the treasurer of a Connecticut town. What is he to do if the treasury happens to be empty? Is he to go out and borrow the money? He has not the power to make such a loan.

East Hartford vs. American Nat. Bank, 49 Conn., 552.

True, there is a provision in the Special Act of 1895, Record, page 54, Section 4, that the towns shall provide for the expenses in the tax levy. But how can the treasurer compel them to do it? If a town meeting be called, can the treasurer compel the voters to lay the tax?

There is one plain principle upon which town liabilities are to be enforced. That principle is that a judgment against a town is a judgment against all its inhabitants, and that execution, founded upon such a judgment, runs against the property of every individual in the town.

Union vs. Crawford, 19 Conn., 331.

Charter Oak Nat. Bank vs. Bloomfield, 121 U. S., 127.

We refer to the following language of a distinguished Connecticut judge:

"Taxation in most cases can only be the result of the voluntary action of the corporation, dependent upon the contingent will of a majority of the corporators, and upon their tardy and uncertain action. It affords no security to creditors, because they have no power over it. Such reasons as these probably operated with our ancestors in adopting the more efficient and certain remedy which has been resorted to in the present case, and which they had seen to some extent in operation in the country whose laws were in their inheritance."

Per Church, J.

Beardsley vs. Smith, 16 Conn., 376.

But what would have been due process of law in this case? The Act of 1887, above cited, furnishes a proper example of it. (Printed Record, page 62, Section 7.)

The executive officers of a Connecticut town are the selectmen. Their appointment is provided for by the Constitution.

"Each town shall annually elect selectmen and such officers of local police as the laws may prescribe." (Constitution of Conn., Article 10, Section 2.)

They are to superintend the concerns of the town, adjust and settle all claims against it, and draw orders on the treasurer for payment.

Gen. Statutes Conn., Section 64.

Charter Oak Nat. Bank vs. Bloomfield, 121 U. S., 136.

One of them is to be first selectman and *ex officio* the town agent.

Gen. Statutes Conn., Section 48.

The Court will notice that the Special Act of 1895 does not impose a tax upon the towns, and provide methods for the collection of it. It simply provides that taxes shall be laid. It

furnishes the treasurer with no effective means of raising money.

The act in substance provides that certain state officers, who have no authority to perform town duties, shall make a demand, not upon the selectmen, who are the executive officers of a town charged with the management of its affairs, but upon the treasurer, who has no power at all to raise money to be applied to such a purpose.

If the treasurer does not meet this demand he is to be sent to prison for disobedience of a mandamus. The voters of the town may refuse to lay the tax, or supply the treasurer with a dollar. Yet the act provides for these peremptory proceedings against the treasurer.

We say it would deprive the treasury of the town of money (if the money were there) without any process of law. If there be no money at hand, then the act would simply deprive the treasurer of his liberty.

* There is due process of law, where the party has by the statute itself an opportunity to appear and contest the demand, for example, by injunction against the levy of a tax.

McMillan vs. Anderson, 95 U. S., 42.

So where the title to an office was in dispute, this Court held that process was due process, when the party had been removed from office "in the due course of legal proceedings according to those rules and forms which have been established for the protection of private rights."

Kennard vs. Morgan, 92 U. S., 480.

There is no finding that the town had laid any tax for these purposes, or that the treasurer has money in hand applicable to them.

Neither the public or private act of 1895, in terms declares, that the cost of a bridge, or its maintenance shall be a debt against the town, or that judgment may be rendered against it for the same.

Again the two acts are inconsistent. The Public Act declares that new bridges shall be built by the towns. (Record page 58, Section 2.)

The Private Act declares that new bridges shall be erected, or built by the commissioners. (Record, page 53, Section 2.)

Again the legislature has undertaken to bind these towns by the bonds of a district. By the fourth section of the Private Act of 1895, it is provided that the commissioners shall issue the bonds of the district to an amount not exceeding \$500,000.

Each Connecticut town has a seal as provided by statute.

Gen. Statutes, Conn., Sections 75 and 129.

But no signature of selectmen, or seal of a town, is to appear upon these bonds. They are to be binding upon the "District," a corporation made up of five towns. Not one of the towns is to have any voice as to the cost of the bridge or the amount of bonds to be issued. State commissioners appointed to perform town duties are to determine whether this structure is to cost \$100,000 or \$500,000. The taxpayers are not to be consulted.

The towns or their treasurers are to pay over to the treasurer of the commission a sum equal to twenty-five cents upon each one thousand dollars of the grand list, in order to provide for the payment of the bonds as they mature, and for maintenance they are to pay any further sums, such as the commissioners may determine, as the proportions of the towns under the provisions of the act.

No other provision is made for the enforcement of the payment of these amounts than the general one that the towns shall provide for such payments in their annual tax levy. There is no provision for notice to the town, what amount of bonds have been issued, or what amount is needed each year.

There is no provision for any process, except the simple demand of the commissioners upon the towns at any time for any amounts within the limits named.

We say this is no process at all. It is mockery to call it process. Who that has any knowledge of the laws of Connecticut, or of New England towns, ever before intimated that a mere demand made upon town officers by a State commissioner for so much money, is, "due process of law"?

It is not done in accordance with established forms or usages known in this State, and we believe not in other States of the Union.

Process implies some notice.

Kennard vs. Morgan, 92 U. S., 480.

Due process means the same thing as "the law of the land," in Magna Charta.

Davidson vs. New Orleans, 96 U. S., 102.

We are not denying the taxing power of the State. They have not laid a tax. They have set state officers over the towns to simply demand so much money of them whenever the commissioners happen to want it.

As to the expenses for maintenance and ordinary repairs the act provides no standard except the determination of the commissioners. It is not provided that the proportions shall be the same as, or different from, those of permanent construction.

The commissioners are absolutely to determine the proportion of the towns.

The question is whether the rights and liberties of towns can be destroyed in this manner.

Another most astonishing feature of the law is found in the Private Act, Section 3. (Printed Record, page 53.)

Damages resulting from defective condition of highways or bridges are to be paid by the Board of State Commissioners, and the towns must pay all these expenses. In other words, a board of state commissioners can be guilty of negligence, and then throw the entire cost of such negligence upon five towns, whose agents they are not, and who have no voice in their appointment. The Chief Justice of Connecticut speaks of this as a monstrous injustice. (Printed Record, page 86.)

Is this a part of "the law of the land"? If so, we will inquire from what "land" such a law is supposed to be derived.

It is not to be forgotten that this highway includes one mile of causeway, located in a freshet region.

Such liabilities as this are to be placed upon five towns, while they have no part in the management of the highway.

Again, this section is thoroughly interwoven with other sections and clauses of the law. It is a part of a scheme to deprive the towns of the right to manage their local affairs.

When various clauses in a law are dependent on each other, each making part of one consistent plan or scheme, then if one part be unconstitutional, the whole goes down together.

Warren vs. The Mayor, 2d Gray, 84.

People vs. The Supervisors, 43 N. Y. 10, 23.

Separate clauses are not to be held valid, unless they are independent clauses.

Wynehamer vs. The People, 13 N. Y., 441, 442.

But there is no other provision in the act for the payment of damages for negligence except this one.

Poindexter vs. Greenhow, 114 U. S., 304, 305.

The objections of the Chief Justice of Connecticut go to so much of the decision as holds that the order of the relators is obligatory upon the town through its treasurer.

We call attention to this dissenting opinion. It is a masterpiece of legal reasoning. Indeed, it plainly demonstrates that if this Private Act of 1895 can be sustained, then town government is destroyed in Connecticut.

It may be asked "how is this a Federal question"? We answer because such a law violates both State and Federal constitutions.

We beg leave to inquire whether a law which makes one man pay damages for the negligence of another, whom the former has not selected as his agent, does not violate the Federal and State constitutions?

What "due process of law" exists, or can exist which will justify such legislation?

The court will at once see that the question of a proper location of this bridge may become of paramount importance. Not the slightest permission is extended under the Private Act of 1895 to the city of Hartford, or either of the five towns, to have any voice in the location of the structure. Their only duty and privilege is to pay the amounts demanded of them.

This is the same kind of interference with local affairs which

was repudiated by the Supreme Court of Illinois, when the State attempted to lay out and construct parks in Chicago.

People vs. Mayor of Chicago, 51st Illinois, 17.

Can it be seriously contended that the Constitution of the United States contains no guaranty of the right of local self government?

For what purpose was the 14th Amendment inserted into the Constitution, if not to afford such protection?

It is not to be forgotten, that while the Fifth Amendment of the Federal Constitution was intended as a restraint upon congress, these provisions for due process of law found in the Fourteenth Amendment are a restraint upon State legislatures.

Davidson vs. New Orleans, 96 U. S., 102.

We now contend that the destruction of local self government in case of a Connecticut town is the destruction of "due process of law" with respect to it, and violates both the State and Federal constitution.

"Due process of law" has been repeatedly defined. We refer to an admirable collection of these statements of it in

Palmer vs. Stuart, 74 N. Y., page 191.

"It may, however, be stated generally, that due process of law requires an orderly proceeding adapted to the nature of the case, in which the citizen has an opportunity to be heard, and to defend, enforce, and protect his rights. A hearing or an opportunity to be heard is absolutely essential. We cannot conceive of due process of law without this."

Per Earl J. Stuart vs. Palmer, *supra*.

A proceeding which proceeds upon inquiry and renders judgment only after trial.

Webster *arguendo*. Dartmouth College Case, 4th Wheaton, 519.

"Due process of law in each particular case means such an exertion of the powers of government as the settled maxims of law permit and sanction, and under such safeguards for the protection of individual rights as these maxims prescribe for the class of cases to which the one in question belongs." (Cooley's Constitutional Limitations, page 356.)

We beg to inquire what notice this town (now sought to be subjected through its treasurer) has ever had to impeach, or even to question the determination of the State Commissioners, as to the proportions due from the town of Glastonbury?

The town of Glastonbury has never been called upon to lay any tax for this purpose. Had it been notified to lay such tax, and had it wrongfully refused, then process should have been served upon the municipality, and the customary "law of the land" which has prevailed in Connecticut for two centuries would have given the town an opportunity to appear and defend.

It is said by a majority of the State court that mandamus is due process against the treasurer. That is not at all the point. The treasurer is liable only where he is subject to a clear duty, and where he has no discretion. The duty must be imperative, and the officer must have no discretion whatever.

Seymour vs. Ely, 37 Conn., 106.

Mandamus is granted against a public officer where the duty is precise and definite, the act ministerial, and where the officer has no discretion whatever, and the relator is without other adequate remedy.

Am. Casualty Ins. Co. vs. Fyler, 60 Conn., 459.

Can it be seriously contended that the treasurer is bound to take money which was raised for support of paupers, or in order to pay interest upon town indebtedness or for the support of or-

dinary highway's, and devote it to the support of a bridge at Hartford?

Yet the Private Act of 1895 makes it the duty of the treasurer to pay, without notice to the town, and without the least opportunity to question the demand, or if found correct, then to provide for it.

We say this overturns all due process of law.

But our opponents contend, and the State Court by a majority of one holds, that upon these facts no property of Glastonbury is to be "taken."

Record, page 83.

Booth vs. Woodbury, 32 Conn., 118, 130.

Railroad Co. vs. County of Otoe, 16 Wallace, 667, 676.

No doubt it is not the taking of private property for public use under the right of eminent domain. A mere tax is not the taking of private property under the clause of the Constitution relating to that subject.

But the conclusive answer is this. The present law does not impose a tax. It is not the exercise of the taxing power. It simply declares that certain towns shall lay taxes. Having made that simple declaration, it proceeds to order the treasurer to pay over any town moneys in his hands.

Is there any doubt whatever that the money in the hands of the treasurer belongs to the taxpayers of Glastonbury for public purposes? Is it not "taken," when seized for new and other purposes than that for which it was raised?

Process without notice is no process. An assessment for a public improvement without notice is void.

Stuart vs. Palmer, 74 N. Y., 183.

This is not a mandamus, intended to obtain a tax levy. It

does not seek to compel the selectmen to call a town meeting for the levy of a tax.

It is said that the five towns are found by judicial decree to be specially benefited. We deny this position. The special benefit assessed upon them in 1889 was fully paid. (Printed Record, page 75; foot of page.)

The Act of 1887 under which this was done was expressly repealed in 1893.

Public Acts, Conn., 1893, Chapter 239, page 395.
Printed Record, page 76, top.

We say there is no truth in the assertion that these towns have been found specially benefited under any legislation of 1895.

The legislature of 1895 carefully avoided proceedings to ascertain damages or benefits. The old bridge had been burned, and they loaded the highway without any bridge upon five towns.

We are not denying that the legislature may place burdens upon us. We do deny that in so doing it can overturn the regular, traditional, accepted "law of the land," which relates to these towns, and which has been acted upon as one of the rights of, and as imposing obligations upon towns, long before we had a constitution.

Our history covers 250 years. We have lived under the present constitution less than 80 years.

It is said that towns have no inherent rights.

Webster vs. Harwinton, 32 Conn., 131.

We answer, that it makes no difference whether their rights

be inherent or otherwise. They are composed of persons who do possess inherent rights. They are fairly entitled to notice under any definition of "due process of law" and under State or Federal constitutions.

We notice that Judge Baldwin quotes the famous case relating to the reorganization of police in the city of New York,

People vs. Draper, 15 N. Y., 532.

We call attention to the brilliant and powerful dissenting opinion of Judge Brown in that case. He says:

"If the constitution assures to the electors, or the authorities of the counties, cities, or towns, the right to select their local officers, and to conduct the local administration, the legislature cannot by changing the names of counties, cities, and towns into shires, arrondissements, or municipalities, or by uniting two or more of them together, and denominating it a district, take away the substantial right of self government. What cannot be done directly, shall not be done indirectly." Per Brown, J., 15 N. Y., 563.

We have cited a dissenting opinion. It was afterward approved by the Court of Appeals, and they declare that it ought to have constituted the opinion of the majority.

People vs. Albertson, 55 N. Y., 50. See p. 54.

See also *People vs. Porter*, 90 N. Y., 68.

The authorities cited by the majority of the State Court do not sustain its positions.

These cases establish one very plain proposition. Burdens may be placed by the Legislature upon counties, cities, and towns. Bridges and highways may be assigned to the charge of the people in particular localities. Not one of them sustains the point that local self-government can be taken away in the process of imposing these burdens. Not one of them holds that counties, cities, or towns are to be held liable for

the negligence of State commissioners. On the contrary, these authorities will show that the people of districts were permitted to manage their own affairs and to raise money in their own way.

See *Washer vs. Bullit Co.*, 110 U. S., 565; and *Agawam vs. Hampden* (*cited*), 130 Mass., 528.

As to the Connecticut case of *Granby vs. Thurston*, it does not even tend to support the position taken by our opponents. There is not a word in the resolution of the legislature or the opinion of the court which gives any countenance to the claim that towns can be subjected to seizure of their funds without notice, or be compelled to pay damages for the negligence of State commissioners, or be drawn into court by process against the treasurer without process of any kind against the town. On the contrary, the resolution directly provides that the building and maintenance of the bridge shall be done by the inhabitants of Granby.

Granby vs. Thurston, 23 Conn., 417.

Even in the case of *People vs. Flagg*, so often cited against us, the local authorities were respected.

Chief Justice Church remarks:

"The bonds to be given are town bonds; they are to be issued by town officers; and the tax to pay them is imposed upon the property of the town."

People vs. Flagg, 46 N. Y., 405.

In the majority opinion certain citations are made from the Colonial Records of Connecticut. The court is, doubtless, aware that we lived under the charter of Charles II from 1662 to 1818, one hundred and fifty-six years, strictly speaking, without a constitution.

Not one of these or of many other instances which can be taken from our Colonial Records have the slightest tendency

to show that self-government in those days was taken from a Connecticut town.

Colonial Records, Connecticut, —

Vol. 1, page 417.

Vol. 5, page 80.

Vol. 13, page 601.

Vol. 14, pages 605, 630.

Private Laws, Connecticut, Vol. 1, pages 282, 285,

These authorities have been carefully examined. They do not at all sustain the decision given by the Supreme Court of this State in the present cause.

They show, indeed, that the General Assembly has from time to time directed particular improvements to be made at various points in the Colony or State. Not one of them is an authority to the point that towns in Connecticut can be governed by State commissioners sent out from the Capitol to rule them.

See also the following cases:

Farrell vs. Derby, 58 Conn., 234.

Taylor vs. Danbury, Public Hall, 35 Conn., 430.

Burlington vs. Schwarzmann, 52 Conn., 181.

These cases show that the legislature from the earliest days has in such instances provided due process for the towns, and has directed them to go forward and act as towns, lay taxes as towns, and, in case of failure, then to be liable to judgment and execution against the inhabitants.

We deny the power of the General Assembly to rule a town by State commissioners. The destruction of local government is the same thing as the destruction of the ancient and accepted "law of the land," and this, again, is the same thing as the destruction of due process of law.

"The provisions of the metropolitan police bill imply much more than they express. They imply noth-

ing less than the power of the Legislature to unite the entire state into a single district for the purposes of police, with its chief or prefect at the seat of the central authority and its subordinate chiefs and agents in every city, town, and hamlet in the State. The appointment and removal of its numerous force, the dispensation and distribution of its immense patronage, would follow as incident to the main power. The principle of the act asserts the existence of this authority in the Legislature, without limitation or qualification. This is not all. The metropolitan act relates to police. The next act may relate to finance, to taxation, and to revenue. The Legislature may think it wise and expedient that the electors and authorities of the counties, cities, towns, and villages shall no longer select their assessors, tax collectors, and treasurers, as they have been accustomed to do. It may also think that boards of supervisors shall no longer sanction and apportion the assessments. . . . Let the same scheme have effect as to the support and maintenance of the poor, the construction and repairs of bridges and highways, and the constitutional rights and privileges of the counties, cities, and towns as separate communities will perish and become extinct in the presence of this modern rule of constitutional construction."

People vs. Draper, 15 N. Y., pages 571, 572.

Per Brown, J.

It is this opinion which the Court of Appeals afterward approved.

"To my mind the dissenting opinion of Judge Brown, concurred in by Judge Comstock, presents unanswerable arguments why the decision should have been different. The constitution in providing for a state government in all its parts and for the entire territory, distributing its powers among the various departments and organizing and authorizing the creation and organization of local governments for the different parts of the state, under the general division of counties, cities, villages, and towns, and in such

forms that every power of government necessary to be delegated to any locality may be delegated to and conferred upon one or other of the municipal governments thus authorized and recognized would seem to exclude the idea of the creation of any new or other division for the exercise of political power or any other or different local government, and, by necessary implication, prohibit it."

People vs. Albertson, 55 N. Y., page 64.

Per Allen, J.

In the case of Davidson vs. New Orleans, 96 U. S., 102, Mr. Justice Miller says:

"But when, in the year of grace 1866, there was placed in the Constitution of the United States a declaration that 'no state shall deprive any person of life, liberty, or property without due process of law,' can a state make anything due process of law which, by its own legislation, it chooses to declare such. To affirm this is to hold that the prohibition to the states is of no avail, or has no application where the invasion of private rights is effected under the forms of state legislation. It seems to us that a statute which declares in terms and without more that the full and exclusive title to a described piece of land which is now in A shall be, and hereby is, vested in B, would, if effectual, deprive A of his property without due process of law within the meaning of this constitutional provision."

But we will inquire what difference in principle is there between a law which divests a man of real estate in the manner above stated and another law which makes A responsible in damages for all the negligence of B in the management of a highway?

By what right does the legislature attempt to transfer the money in the hands of this treasury over to a board of State commissioners? Those commissioners do not appear from the

record to have made any demand upon the town, or to have taken any steps to cause money to be raised by taxation to meet their demands.

They simply propose to take any money which they can find in the hands of the treasurer or cause him to be imprisoned. Then the Supreme Court of the State says that our money is not "taken," because taxation is not the "taking" or "deprivation" of property. We reply that this proceeding is not taxation at all.

V.

We have assigned for error (Printed Record, page 69, Section 4, and page 70, Section 10) that the town of Glastonbury and its inhabitants are deprived of equal protection of the laws.

In making this point we do not overlook certain decisions of this court. It has holden that the legislature may make laws for particular districts, and may impose peculiar burdens upon them, according to the circumstances of each case. Of course, different municipal bodies must bear different burdens, and if all individuals are treated alike, the law is not obnoxious to the Fourteenth Amendment.

Barbier vs. Connolly, 113 U. S., 27.

Fallbrook Irrigation Dist. vs. Bradley, 164 U. S., 112.

But there is nothing in these decisions which empowers a Legislature to take from five towns the right of self-government, while the same right is extended to all other towns in the State.

What law has been made for the other towns? We quote it from the Public Acts of 1895.

Be it enacted, etc.:

Section 1. Necessary bridges between towns, except it be otherwise specially provided for by law, shall be built and kept in repair by such towns, and the expense thereof shall be apportioned between them according to their grand lists, unless they otherwise agree.

Section 2. All acts and parts of acts inconsistent herewith are hereby repealed.

Approved July 9, 1895.

Public Acts of Connecticut, page 703, Chapter 339.

This shows plainly enough that the other towns had no idea of placing themselves under a State commission in respect to bridges between towns. Under this law they can raise money in their own way, make agreements with each other, build, and maintain their own bridges.

When they come to the bridge at Hartford, five towns are to be denied all these rights, which other towns and their inhabitants enjoy.

The people of New Haven may build bridges in their own way, raise money in accordance with their own methods, locate their own bridges, make agreements with other towns in regard to such matters. Hartford, on the other hand, is to be placed under a State commission; her people are to be denied these privileges, and really no right is left to them except to pay.

We say that the Fourteenth Amendment intends to prohibit a State legislature from making odious and unnecessary discriminations of this kind. Even if the burdens which different towns are to bear be different, we say it is not competent to deny to these five towns the right to manage their local affairs in their own way, while that right is conceded to all other towns in the State.

VI.

The defendant in error has joined a motion to affirm the judgment in the court below with the motion to dismiss, and alleges, as a reason for granting the motion, that the writ of error to this court was brought for the purpose of delay. A slight examination of the record will show that no delay has ever been asked for or suggested by the plaintiff in error at any stage of the proceedings.

The defendant in error also alleges that the questions raised in the record are too frivolous for further argument. He has, however, taken the precaution to argue them at some length. It is difficult to conceive of a record that discloses more important questions than the questions raised in the record of this case. The inconsistent conduct of the General Assembly in reference to its own contract, its extraordinary course in reference to the means provided for the enforcement of its *act*, together form a chapter in the legislation of the State which is without precedent in the past, and it is hoped may have no successors in the future.

In 1887 the legislature passed an act making the highway in question a free public highway. Before that time the State had always been charged with the maintenance of this highway, and had maintained it either by itself or through its own agents. The expense of making this change was put upon the five towns named in the act heretofore cited. This expense amounted to \$216,000, of which the State paid \$84,000.

In 1893 the legislature again assumed the burden of the maintenance of this highway in the act approved June 29, 1893. This act provided that the highway formed by the bridge and causeway should thereafter "be maintained by the State of Connecticut at its expense," And the expense of repairing and maintaining said highway and bridges shall be incurred by said Board of Commissioners appointed

by the Governor) on behalf of the State." The language could not be plainer. The State took back the care and maintenance of the bridge and causeway upon itself, where it had always been before 1887, when the State put the maintenance of this highway on said five towns, taking it away from its own agent, the Toll Bridge Company, which had taken care of it, under an agreement with the State, that it should pay itself for the maintenance of the highway by taking toll. It would seem that at this point the legislation might naturally end, and that the honor and good faith of the State were pledged to take care of this highway from the time the Act of 1893 was passed. But such was not the case. On November 13, 1894, the State, by its commissioners, contracted to erect a bridge across Connecticut River. The contractor commenced the building of the bridge, and had made considerable progress in the construction of a temporary bridge when, on May 17, 1895, the former bridge took fire and was totally destroyed. Within seven days after the bridge was burned the legislature passed the Act approved May 24, 1895, which put the rebuilding of the burned bridge and the maintenance thereof on the five towns named in the act. The act did not even provide that the insurance on the bridge should be given to the towns. The towns were required to go forward and build the bridge to take the place of the one destroyed, while in the care and custody of the State under the Act of 1893. The plaintiff in error contends that such conduct on the part of a sovereign state is against natural justice and oppressive, and he has invoked the power of the courts, both Federal and State, to protect him from this wrong. The questions here presented are above the charge of frivolity.

When the chief justice of a state renders an opinion against the constitutionality of a law, so learned and vigorous as this, and in that opinion another judge concurs, it is altogether too late to say that the questions which they discuss are frivolous. It may be said that Chief Justice Andrews and Judge Hamers-

ley have not undertaken to pass upon federal questions. But they have, shown, with great clearness, that to set State commissioners over Connecticut towns, to rule them and to make the towns responsible for the acts and negligence of such commissioners, is to destroy due course of law or due process of law in this State.

The State court, by a majority of one, holds that the legislation in question does not violate the State or Federal Constitution. But no one can read the minority opinion and follow its accurate reasoning and powerful diction without feeling the irresistible force of its logic. It discusses and vindicates the traditions, customs, and laws of a free people who claim the right of self-government.

We respectfully submit that the motion to dismiss the writ of error and the motion to affirm the judgment of the State court, should be denied.

JOHN R. BUCK,
LEWIS E. STANTON,
OLIN R. WOOD,

Counsel for Plaintiff in Error.

Hartford, Conn., April 15, 1897.

JAMES H. MCKENNEY.

Brief of Buck & Stanton for U. S.

Supreme Court of the United States.

OCTOBER TERM, 1897.

Filed Mar. 12, 1898.

S. H. WILLIAMS,

Treasurer of the Town of Glastonbury, Hartford County,
and State of Connecticut,
PLAINTIFF IN ERROR

v.

ARTHUR F. EGGLESTON,

Attorney for the State of Connecticut,
DEFENDANT IN ERROR.

SUPPLEMENTAL BRIEF ON BEHALF OF PLAINTIFF IN ERROR.

IN ERROR TO THE SUPREME COURT OF ERRORS
OF THE STATE OF CONNECTICUT.

JOHN R. BUCK,
LEWIS E. STANTON,
OLIN R. WOOD,

Counsel for Plaintiff in Error.

— • —
HARTFORD, CONN.

PRESS OF THE CASE, LOCKWOOD & BRAHARD COMPANY.

1898.



Supreme Court of the United States.

OCTOBER TERM, 1897.

Term, No. 570

Case, No. 16,349

S. H. WILLIAMS,
TREASURER OF THE TOWN OF GLASTONBURY,
PLAINTIFF IN ERROR,

vs.

ARTHUR F. EGGLESTON,
ATTORNEY FOR THE STATE OF CONNECTICUT,
DEFENDANT IN ERROR.

SUPPLEMENTAL BRIEF OF PLAINTIFF IN ERROR, WITH SOME NEW CITATIONS IN SUPPORT OF THE CLAIMS MADE IN THE ORIGINAL BRIEF ON THE MOTION TO DISMISS.

I.

FEDERAL QUESTIONS.

The impairment of the obligation of the contract of Nov. 13, 1894 (page 23, Printed Record), by the Act of May 24, 1895,—the different treatment of the five towns mentioned in the Act of June 28, 1895, from that of the other towns in the state, relating to town duties—the arbitrary taking of the money of the Town of Glastonbury without due process of law, as shown in the Special Act of June 28, 1895, are questions which appear in the record, and they are necessarily federal questions.

IMPAIRMENT OF THE OBLIGATION OF THE CONTRACT.

Since the commencement of these proceedings, and while they were pending in the State court, the state, through commissioners, settled with the Berlin Iron Bridge Company, with whom it had contracted to construct the bridge, and paid damages for the non-fulfillment of its contract. This settlement was evidently in anticipation of fatal objections that might be made to the Act of May 24, 1895, by reason of its impairment of that contract. But notwithstanding this settlement the question whether this act was void by reason of its effect upon the bridge contract, and is not also void for every other purpose, still remains, and this is a federal question. It is fully discussed on pages 9-23, inclusive, in the original brief.

EQUAL PROTECTION OF THE LAWS.

The question whether the town of Glastonbury and its taxpayers are deprived of the equal protection of the laws, in violation of the 14th Amendment, is discussed on pages 54 and 55 of the original brief.

The five towns mentioned in the act have been put into a class by themselves, and separated from the other towns of the state by being subjected to different treatment in regard to town duties, and are therefore deprived of the equal protection of the laws.

In the case of —

Gulf, Colorado & Sante Fe R'y., vs. Ellis, 165 U. S.,
150 (165) —

it was held (opinion by Mr. Justice Brewer) that

"It is apparent that the mere fact of classification is not sufficient to relieve a statute from the reach of the equality clause of the Fourteenth Amendment, and that in all cases it must appear not only that a classification has been made,

but also that it is one based upon some reasonable ground — some difference which bears a just and proper relation to the attempted classification and is not a mere arbitrary selection."

DUE PROCESS OF LAW.

In the original brief this question is discussed on pages 23-54, inclusive. The Acts of May 24, 1895, and June 28, 1895, do not constitute due process of law:

1st. Because they deprive the town of the right to perform town duties (imposed by the acts) by officers of their own choosing, which is contrary to the settled practice and law of the state, and arbitrarily destroys a right which those towns had before the Connecticut Constitution was adopted, and which was not taken away by that instrument. Town government is to this extent abolished, and the positive orders of state commissioners, appointed at the Capitol, are put in its place.

2. Because the acts provide for arbitrarily taking the property of the inhabitants of Glastonbury without proper notice of any proceedings under which the property is to be taken, and without opportunity to be heard.

Upon the first point we cite the case of *Mattox vs. United States*, 156 U. S., 237 (243), in which this court held (opinion by Mr. Justice Brewer) that the Constitution is to be interpreted "in the light of the law as it existed at the time it was adopted, not as reaching out for new guaranties of the rights of the citizen, but as securing to every individual such as he already possessed as a British subject, such as his ancestors had inherited and defended since the days of Magna Charta."

This applies with equal force to the Constitution of the State of Connecticut.

In the case of Murray's Lessees *vs.* Hoboken Land and Improvement Company, 18th Howard, 230, it was held (opinion by Mr. Justice Curtis) that in order to determine what is due process "we must look to those settled usages and modes of proceeding existing in the common and statute law of England before the emigration of our own ancestors, and which are shown not to have been unsuited to our civil and political condition by having been acted on by them after the settlement of this country."

"Due process of law" requires only that the procedure shall be in accordance with the law and settled practice of the state.

Holman *vs.* Manning (N. H.), 19 A. 1002.

A. M. Digest 1890, page 634, paragraph 243.

We have already shown that the towns named in the act had the right of performing town duties through officers of their own choosing, both before and after the State Constitution was adopted. (See pages 24, 25, 26, 49, 50, 51, 52, and 53 of the original brief.) See also extract from "Connecticut Laws of 1643," and an extract from "Ludlow's Code" (1650), quoted on page 34 and 35 of the original brief. See also copy of the statute laws of the state, showing the law relating to building and repairing bridges between towns, quoted on page 55. The laws of the State of Connecticut relating to the maintenance of highways are as follows:—

"SEC. 2665. Towns at their annual meetings may provide for the repair of their highways, for periods not exceeding five years, and if any town neglect to so provide at such meeting the selectmen may provide for such repairs for a period not exceeding one year.

"SEC. 2666. Towns shall, within their respective limits, build and repair all necessary highways and bridges, and all highways to ferries as far as the low-water mark of the waters over which the ferries pass, except where such duty belongs to some particular person. It shall be the duty of

the town of Waterbury to construct and maintain all necessary bridges over the Naugatuck and Mohegan Rivers within the limits of said town."

The General Statutes of the state require that town duties shall be discharged by town officers, and largely by the selectmen. The provision of the statute relating to the duties of selectmen on this point is as follows:

"They shall superintend the concerns of the town, adjust and settle all claims against it, and draw orders on the treasurer for their payment."

See Section 64, p. 17, Gen. Stat. of Conn., 1888.

See also Sec. 64 to 70, inclusive, for the provisions of the Connecticut law relating to the duties of selectmen in relation to town affairs.

These laws show what rights Connecticut towns had in relation to town duties before and since these rights were protected and preserved by the Constitution. (For a discussion of this point see the dissenting opinion of Chief Justice Andrews, concurred in by Justice Hamersley, Record, pages 88 and 89.)

If the "law of the land" as applied to Connecticut correctly appears in the statutes and codes above cited, then the Special Act of June 28, 1895, which provides for the discharge of town duties by outside commissioners, is in violation of that law of the land, and consequently is not due process of law.

The "due process of law" herein contended for is an inheritance from our English ancestors, and it was "the law of the land" always after King John, at the demand of the barons of England, gave his unwilling signature to Magna Charta.

On the second point we cite the case of County of San Mateo *vs.* So. Pacific Ry., 8th American and English Rail-

road Cases, 27, 13th Fed. Reporter, 722. The opinion is given by Mr. Justice Field, in which he says:

"There is something repugnant to all notions of justice in the doctrine that any body of men can be clothed with the power of finally determining the value of another's property, according to which it may be taxed, without affording to him an opportunity of being heard respecting the correctness of their action."

And again, in speaking of what constitutes due process of law, he says:

"And by 'due process' is meant one which, following the form of law, is appropriate to the case, and just to the parties to be affected. It must be pursued in the ordinary manner prescribed by the law: it must be adapted to the end to be attained, and it must give to the party to be affected an opportunity to be heard respecting the justice of the judgment sought. Without these conditions entering into the proceedings, it would be anything but due process."

Tried by this test, the Act of June 28, 1895, falls within the prohibitions of the Fourteenth Amendment.

The Bridge Commission pronounces judgment against these towns for certain sums of money, from time to time, as in its opinion may be needed. True, it is not a court, but it is a tribunal created with power to take the property of the citizens, and that is as much power over property as courts have. The towns to be affected have had no voice in selecting this commission, and no provision for reviewing its judgments is made. They have no voice in limiting the expenditures under the act, and no hearing is accorded anywhere or at any stage of the proceedings, nor is any notice given to the town of the proposed assessment.

This is not due process of law, as it existed in Connecticut before and since the adoption of the present State Constitution.

Both of the acts complained of arbitrarily fix the proportion which each town shall pay; but there is no way of determining whether those proportions be just or unjust. The town of Glastonbury is not permitted to show that its proportion is too large as fixed by the act. The fact that no portion of the improvements is within the limits of the town cannot be shown as a reason why the proportion is too large, or in other respects wrong.

It also appears that the proportionate share of the towns in respect of bonds, when reckoned upon the basis of the grand list, as provided in the Act of June 28, 1895, is fixed by one ratio: Hartford, 79 per cent.; East Hartford, 12 per cent.; Glastonbury, South Windsor, and Manchester, 3 per cent. each; and the annual payments required to be made ("25 cents on each one thousand dollars of the grand list of such town") constitutes another ratio: Hartford, 85 per cent.; East Hartford, $4\frac{1}{2}$ per cent.; Glastonbury, $2\frac{1}{6}$ per cent.; South Windsor, $1\frac{2}{3}$ per cent.; Manchester, $6\frac{2}{3}$ per cent.

But no hearing whatever or notice to the towns as to these proportions is provided, and no opportunity to contest them. Glastonbury might claim that the wealth of Hartford is more than \$100,000,000, while hers is less than \$2,000,000. But no opportunity is accorded to the town to be heard before commissioners or anywhere else upon the question.

In regard to ordinary support and maintenance, it is provided that the five towns shall pay "such further sums as the commissioners may determine as the proportions of said towns under the provisions of this resolution."

Sec. 4, Special Act (at end of Sec.), Printed Record,
page 54.

It is not provided that these proportions shall be the same as those of the cost of construction. If they are not to be the same, then they are to be, or may be, changed from time to

time by the commissioners. If, on the other hand, they are the same, then the amounts called for each year, or at certain periods, are to be fixed without notice, and with no opportunity to contest such amounts.

Can there be any manner of doubt that the process of fixing these proportions, or amounts, of the cost of ordinary support and maintenance is a process of assessment? Yet no notice or hearing is required or permitted.

In the case of *Matter of Trustees of Union College*, 129 N. Y., 308, it appears that an act of the legislature of New York provided for the establishment of a scale of water rents, to be fixed by a commission, and apportioned with reference to the character and location of the buildings. The act also fixed the aggregate amount of the water rents. It also provided that the apportionment among the taxpayers should be "in proportion to the area of the respective lots, and not to exceed one-fifth, nor to be less than one-tenth, of one per cent, per square foot." (page 312.)

No provision was made in the act for a hearing on the part of the property-owners, "either as to the arbitrary basis of apportionment, which took no account of value, or even as to its determination within the boundaries of the commissioners' discretion."

This act was held to be unconstitutional for want of notice to the persons affected by it and a hearing. This act bears a close resemblance to the acts of May 24 and June 28, 1895, of which we complain. The New York and Connecticut acts fix the proportionate amount to be paid for a public improvement, without notice or hearing to the persons or corporations who are to pay.

Judge Finch, in giving the opinion of the Court, says (page 313):

"In fixing the aggregate sum to be raised and the area of property which shall pay it, the legislature determines a

public question, and upon considerations of the public interest and welfare. . . .”

“But when the public questions are settled, and the tax comes to be apportioned, a personal liability of the individual and a lien upon his property are initiated, and he has a right then to be heard upon all the questions which affect and determine that liability. His right is to pay no more than his just proportion, and the legislature cannot arbitrarily determine the amount, refusing the person assessed a reasonable opportunity to be heard.”

In the case of Fall Brook Irrigation District *vs.* Bradley, 164 U. S., 112, decided in 1896, it was held (opinion by Mr. Justice Peckham), that the legislature of California could create a district for public purposes without any notice to the district created (174). That the “right which he (the taxpayer) therefore has, is to a hearing upon the question of what is termed the apportionment of the tax, *i. e.*, the amount of the tax which he is to pay,” (page 175,) and that the irrigation act provided for notice and a hearing (pages 170 and 175).

It was also held that “due process of law is not violated, and the equal protection of the law is given when the ordinary course is pursued in such proceedings for the assessment and collection of taxes that has been customarily followed in the state, and where the party who may subsequently be charged in his property has had a hearing or an opportunity for one, provided by the statute.”

We note this opinion also in reference to the question whether this Court is bound by the decision of the state court upon a question of due process of law. On page 159 the Court says:

“We do not assume that these various statements, constitutional and legislative, together with the decision of the state court, are conclusive and binding upon this court upon the question as to what is due process of law, and as

incident thereto, what is a public use. As here presented these are questions which also arise under the federal constitution, and we must decide them in accordance with our views of constitutional law."

In the case of *Scott vs. McNeal*, 154 U. S., 45, it was held that the Supreme Court of the United States is *not bound* by the construction of a statute of a state put upon it by the highest state court, in certain cases, and particularly when a question is "whether the statute provided for the *notice* required to constitute due process of law."

In the case of *Iowa Central Railway Company vs. Iowa*, 160 U. S., 389 (393), it was held (opinion by Mr. Justice White), that —

- * "The Fourteenth Amendment in no way undertakes to control the power of a state to determine by what process legal rights may be asserted, or legal obligations be enforced, provided the method of procedure adopted for the purpose gives *reasonable notice* and affords fair opportunity to be heard before the issues are decided."

In the case of *Happy vs. Mosher et al.*, 48 N. Y., 313 (317), it was held (Earl, J.), that due process of law

"Need not be a legal proceeding according to the course of the common law, neither must there be a personal notice to the party whose property is in question. It is sufficient if a kind of notice is provided by which it is reasonably probable that the party proceeded against will be apprised of what is going on against him, and an opportunity afforded him to defend. It matters not that it may be difficult for him to defend under the law, so long as it is not impracticable for him to do so by use of such reasonable efforts as the owners of property may generally be supposed to be capable of. This opportunity to defend, however, must not be merely colorable and illusory."

This case is sometimes quoted as furnishing an authority that notice is not required when property is taken for public

use, and that due process of law does not require notice to be given when property is taken, but it is disclosed in the opinion that the statute which was construed in that case provided for notice of the proceedings by publication, and that the property-owner should have the right to have the lien which might be placed on his property under the act, litigated before sale.

In the case of *Winona & St. Peter Land Company vs. Minnesota*, U. S. Rep., Volume 159, 526 (537) (1895), it was held (opinion by Mr. Justice Brewer), in relation to the imposition of a tax, that "if the owner has an opportunity to question the validity or the amount of it, either before that amount is determined, or in subsequent proceedings for its collection," he is not deprived of his property without due process of law.

This law required publication of the list of delinquent taxpayers to be made, together with a notice in the form prescribed by statute, for at least two weeks, in some newspaper of general circulation in the county.

It also provided that any taxpayer interested could file an answer, setting forth his defense or objection to the tax or penalty, "and thereupon the court is to hear and determine the question raised by this complaint and answer as it hears and determines any other action." (Page 535 of the opinion.)

In the case of *Chicago, Milwaukee & St. Paul Railway Company vs. Minnesota*, 134 U. S., 418, it appears that the legislature of Minnesota passed an act establishing a railroad and warehouse commission with power to make rates of charges for transportation of property, and with no provision for any judicial inquiry as to the reasonableness of such rates. This court held (opinion by Mr. Justice Blatchford), the act to be in violation of the Fourteenth Amendment. We quote from the opinion (page 457):

"It deprives the company of its right to a judicial investigation by due process of law, under the form and with the machinery provided by the wisdom of successive ages for the investigation judicially of the truth of matters in controversy, and substitutes therefor as an absolute finality the action of a railroad commission which, in view of the power conceded to it by the state court, cannot be regarded as clothed with judicial functions or possessing the machinery of a court of justice." "No hearing is provided for, no summons or notice to the company before the commission has found what it is to find, and declared what it is to declare, no opportunity provided for the company to introduce witnesses before the commission, in fact, nothing which has the semblance of due process of law."

This act closely resembles the act of June 28, 1895.

See the case of *Violett vs. Alexandria, Virginia Supreme Court of Appeals*, Lawyers' Reports annotated, Vol. 31 (March 1, 1896), page 382.

In these proceedings it has been attempted to make the Act of May 19, 1887 (Printed Record, page 60), supply the want of any proceeding in which the question of benefits, or proportion of benefits, derived from the highway could be ascertained. But it appears that in 1893, when the state assumed the burden of maintaining the bridge, the legislature repealed that act. In many respects the law of 1887 was not open to the objection which we make to the Acts of 1895. In other words, the legislature of 1893 repealed the Act of 1887, which related to the maintenance of this highway, and which so far as it permitted the towns to perform their duties through officers of their own choosing, did not fall within the prohibition of the Fourteenth Amendment, and in 1895 passed an act relating to the same matter which did fall within its prohibition.

The Act of 1887 made the bridge and causeway a free public highway, and provided for ample notice to the towns to be affected. It permitted them to maintain the highway

through a board composed of the first selectman of each of the towns. This legislation bears no resemblance to the Act of June 28, 1895. (Printed Record, page 52.) The latter act provides for no notice to the towns required to maintain the highway, of any of the proceedings authorized by it, and gives the town no voice in the selection of officers to carry it out. Speaking generally, those cases cited to sustain the legislation of 1895 (Printed Record, pages 52 and 57) are cases where it appears that ample provision is made for giving notice to the municipal corporations to be affected.

The Special Act of June 28, 1895, is void, because it imposes assessments without notice.

It requires no argument to prove that an assessment for a public improvement without notice is void. This Court has plainly stated the doctrine, and has also laid down a rule by which it may be determined whether due notice is really provided in the law imposing the assessment.

The rule is stated in the case of *Davidson vs. New Orleans*, 96 U. S., 97, as follows:

"That whenever by the laws of the state or by state authority a tax, assessment, servitude, or other burden, is imposed upon property for the public use, whether it be of the whole state or of some more limited portion of the community, and those laws provide for a mode of confirming or contesting the charge thus imposed, in the ordinary courts of justice with such notice to the person or such proceedings in regard to the property as is appropriate to the nature of the case, the judgment in such proceedings cannot be said to deprive the owner of his property without due process of law, however obnoxious it may be to other objections."

The rule is reiterated and enforced in a recent case:

Falbrook Irrigation District vs. Bradley, 164 U. S., 112, (see pages 157 and 158.)

Neither the Special Act of June 28, 1895, nor the General Act of May 24, 1895, comply with this rule. They do not "provide for a mode of confirming or contesting the charge thus imposed." They do not provide "such notice to the person or such proceedings in regard to the property as is appropriate to the nature of the case," nor do they provide for any notice whatever to the party to be assessed. They do not provide for any revision of the assessment "in the ordinary courts of justice."

What is an assessment? To assess means "To fix or settle a sum to be levied or paid." Assessment: "The fixing or settling a sum to be levied or paid, according to a certain proportion."

"Valuation of property for the purpose of taxation and as preliminary to it." "A pecuniary imposition upon persons or property, a tax."

See "Assessment" and "Assess," Burrill's Law Dictionary. Webster's Unabridged Dictionary.

But since the legislature has fixed the proportions, what process of assessment is left to be performed by the commissioners and requiring any notice?

The answer to this question is quite plain. The bridge is to cost any sum not exceeding \$500,000, which may be fixed by the commissioners.

Special Act, Section 4, Printed Record, page 53.

It may cost \$100,000, or \$200,000, \$300,000, and so on. In other words, the legislature says to the commissioners: "Go out and build a bridge and assess the cost of it upon the towns. If it costs \$100,000, assess that sum. If it costs \$500,000, assess that sum."

This process is an assessment beyond all doubt. True, the legislature has fixed proportions, but that was done without

notice to Glastonbury. It will not be pretended that this town had any notice to be heard upon the Acts of 1895. But we have already shown that "the legislature cannot arbitrarily determine the amount, refusing the person assessed a reasonable opportunity to be heard."

See case of Matter of Trustees of Union College, 129 N. Y., 308 (page 313) before cited.

Again, suppose Glastonbury denies that the real cost of the bridge is, say, \$500,000, although the commissioners have undertaken to demand that sum. What opportunity has she to contest such inequitable charge or demand?

No provision whatever is made for any defense in such a case. All that the commissioners need to do is simply to determine that the bridge has cost a certain amount, and then to repair to the town treasury, demand what money they have determined to be due, and take it.

Referring to the sweeping provisions of the act found in the 7th Section, (Printed Record, page 55), we challenge our opponents to show any law of Connecticut under which the town of Glastonbury can contest the charge thus imposed.

The orders of the commission are declared to be absolutely obligatory upon the town. The treasurer must pay in pursuance of such orders, and the commissioners may apply to any court of competent jurisdiction for a mandamus in order to enforce upon the town and its treasurer the orders of the commission.

Suppose that the town should become convinced that the amounts assessed had been greatly overcharged and should apply for an injunction? The commissioners would simply reply, "We have determined that this bridge has cost \$500,000, and our findings and orders are absolutely obligatory upon the five towns, and the court therefore has no authority to enjoin us." We beg leave to inquire what answer Glastonbury could make to this position?

The truth is, this law imposes assessment without notice, and assessment without notice is void.

Stuart vs. Palmer, 74 N. Y., 183 (188).

This is the result of placing state commissioners over towns to perform town duties. The chief justice of the state court has pointed out the unconstitutional character of such laws, and we now add that the appointment of these state commissioners over the towns has led to provisions for assessment without notice, which is void under state and federal constitutions.

As to the assessment of ordinary town taxes, the party has abundant opportunity to contest a charge or burden by appeal from the assessors to a Board of Relief, and also from the latter tribunal to the Superior Court.

Gen. Statutes Connecticut, Revision 1888, Sections 3852 and 3860, Acts of 1897, Chap. 133, page 843.

But these provisions have no relation to such an assessment as the one now before the court.

The special act of June 28, 1895, gives none of those remedies by appeal from assessments, which the tax laws of Connecticut justly provide, but does provide summary proceedings for the collection of the assessment.

In other words, the law provides for assessment without notice, appeal, or contest, and then provides for collection by the most direct and stringent methods.

We are not now complaining of the injustice of such laws. We simply say that they are unconstitutional and void.

Many more authorities, both federal and state, might be cited on this point, but those already cited are sufficient to sustain the claim made by the plaintiffs in error.

While due process of law does not, under the decision of this court, necessarily imply a regular proceeding in a court of justice, or after the manner of such court, yet, where some other proceeding is substituted for court proceedings, under which property may be taken, due process still requires that whatever the proceedings may be, a notice and a hearing must be accorded to the person or corporation whose property is taken.

We submit that there is error in the judgment of the state court.

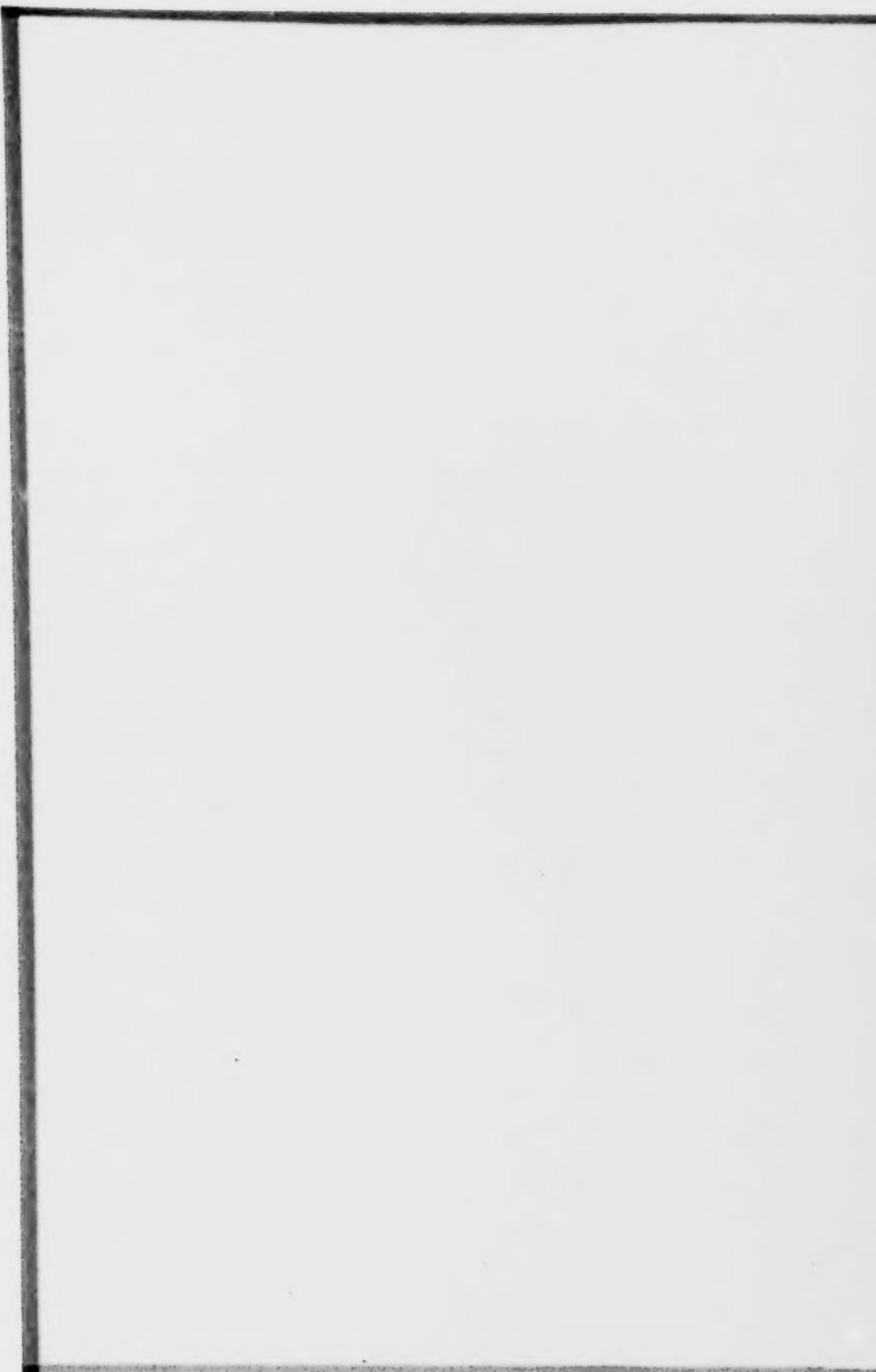
JOHN R. BUCK,

LEWIS E. STANTON,

OLIN R. WOOD,

Counsel for Plaintiff in Error.

HARTFORD, CONN., January 12, 1898.



C. I. 270

APRIL 12, 1898.

ATTORNEY
GENERAL

Supt? City of Sperry vs.
Supreme Court of the United States.

OCTOBER TERM, 1897.

Term, No. 210.

Cas., No. 10,349.

Filed April 12, 1898.

S. H. WILLIAMS,
Treasurer of the Town of Glastonbury, Hartford
County, State of Connecticut,
PLAINTIFF IN ERROR,

vs.

ARTHUR F. EGGLESTON,
Attorney for the State of Connecticut,
DEFENDANT IN ERROR.

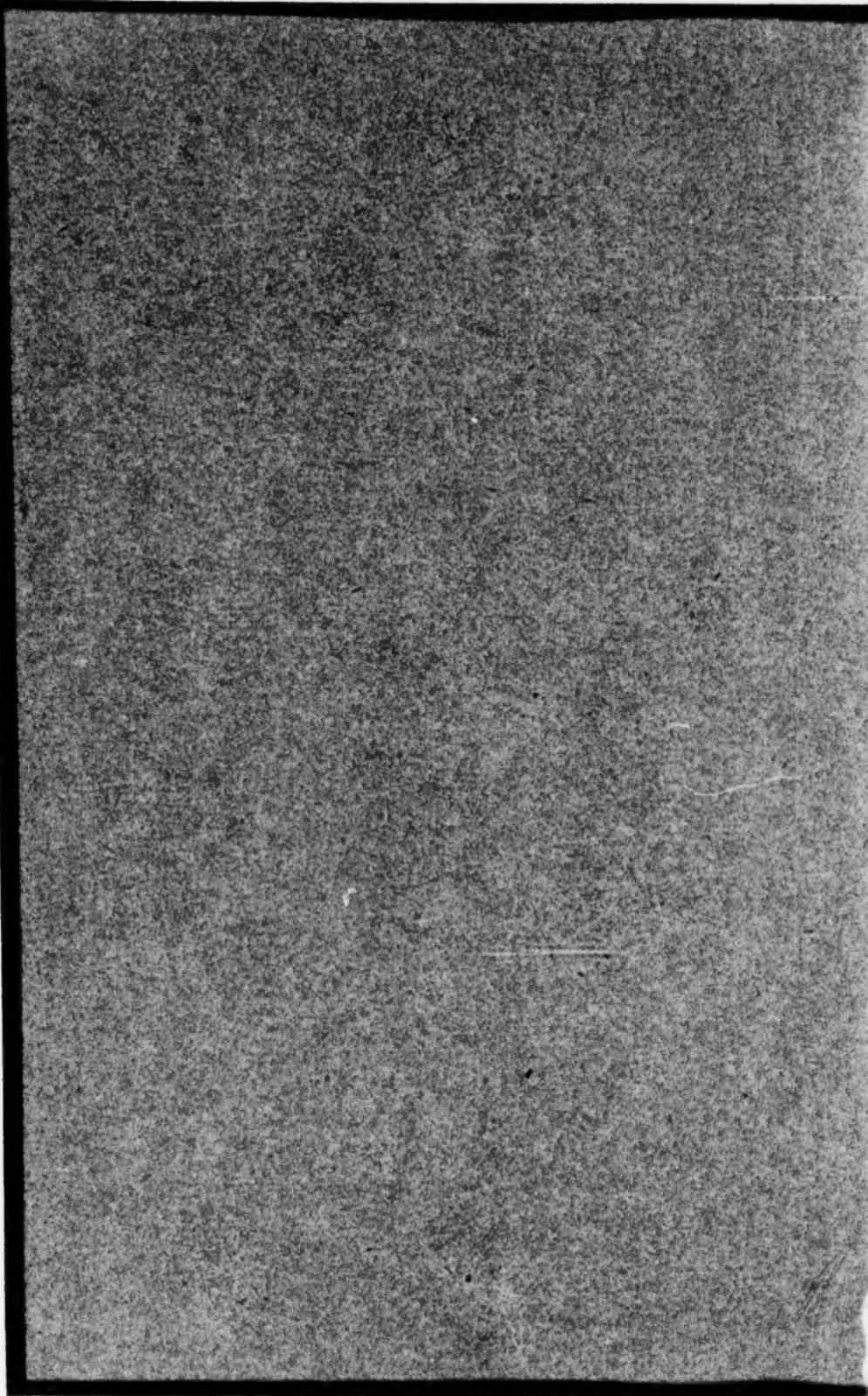
IN ERROR TO THE SUPREME COURT OF THE STATE OF CONNECTICUT.

SUPPLEMENTAL BRIEF FOR DEFENDANT
IN ERROR.

By SPERRY, MCLEAN & BRAINARD, Counsel.

APRIL, 1898.

HARTFORD, CONN.:
Print of This Case, Lockwood & Brainard Company.
1898.



Supreme Court of the United States.

OCTOBER TERM, 1897.

Term, No. 210.

Case, No. 16,349.

S. H. WILLIAMS,

TREASURER OF THE TOWN OF GLASTONBURY, HARTFORD
COUNTY, STATE OF CONNECTICUT,

PLAINTIFF IN ERROR,

vs.

ARTHUR F. EGGLESTON,

ATTORNEY FOR THE STATE OF CONNECTICUT,

DEFENDANT IN ERROR.

IN ERROR TO THE SUPREME COURT OF THE
STATE OF CONNECTICUT.

SUPPLEMENTAL BRIEF FOR DEFENDANT IN ERROR.

The brief of the defendant in error, heretofore submitted to this Court in support of the motion to dismiss or affirm under rule six filed in April, 1897, discusses at length all the points raised in the Record. With that brief is printed the brief of defendant in error, submitted to the Supreme Court of Errors of Connecticut, and it seems to us that the authorities cited in the briefs referred to clearly hold that there is no legal force or merit to the claim of plaintiff in error that

a question under the Constitution of the United States is in any way involved in the proceedings at bar.

In this supplemental brief we shall not attempt to do more than call the attention of this Honorable Court to our briefs in full, submitted in April, 1897, and comment very briefly upon some of the claims found in the brief for the plaintiff in error, filed in April, 1897, and which to us seem to be unwarranted by the record. For the purpose of this argument we hereby submit our brief heretofore filed upon our motion to dismiss or affirm.

The claims of the plaintiff in error may be safely reduced to two propositions, as follows :

First.

The State Court erred in not holding that the two Acts of May 24, 1895 (Ex. 8 R., p. 57), and June 28, 1895 (Ex. B. R., p. 52), and the orders of the Commissioners passed thereunder, impaired the obligations of an alleged contract in violation of the 10th Section of Article 1 of the Constitution of the United States.

Second.

The State Court erred in not holding that said acts or orders referred to deprived the taxpayers of Glastonbury of their property without due process of law and denied to said town and taxpayers the equal protection of the laws in violation of Sec. 1, of Art. 14, of the Constitution of the United States.

I.

THE CONTRACT.

We contend that no question involving the validity of the alleged contract with The Berlin Iron Bridge Company, or its subsequent impairment by the legislation referred to, is properly before this Court for determination.

The contract calls for the construction of a steel bridge across the Connecticut River at Hartford.

The order of the commissioners which gave rise to this action requires the treasurer of the town of Glastonbury to pay \$15 toward the ordinary repair of the highway east of the bridge, and in no way connected with the bridge.

In the finding of facts (R., p. 49, Sec. 4) it is conceded by the respondent treasurer that the \$15 which the treasurer refused to pay was a part of a sum of money expended east of said river, and wholly in connection with the causeway.

We contend, therefore, that, in all events, the acts of 1895 must be left to operate, in so far as they make provision for the maintenance and repair of the highway wholly separate from the bridge.

The Acts describe the highway in question as the bridge across the Connecticut River at Hartford, together with the causeway; this causeway is an elevated roadway about a mile in length, extending from the bridge to Main Street of East Hartford.

The Acts in question make it the duty of the five towns benefited to maintain and repair both the bridge and the causeway. If there was an existing contract binding the State to pay for a new bridge, it does not follow that the General Assembly was impotent to place the burden of maintaining the causeway upon the five towns.

In paragraph 24 of the defendant's return (R., p. 21) the defendant says:

"The greater part of the expense incurred by said commissioners, the relators in the present application, and for the payment of a proportion of which said demand and requisition was made on said town of Glastonbury, and on this defendant as treasurer of said town, September 14, 1895, was

incurred by said commissioners in connection with and in preparation for the construction of a *permanent bridge* across said river at the point described in said contract with the said The Berlin Iron Bridge Company."

But the plaintiff in error not only did not try to establish the truth of this very necessary part of its defense, but, as we have heretofore shown, admitted in the finding of facts that the money which this writ seeks to recover was expended "*wholly in connection with the causeway.*"

In the hearing before the Connecticut Court the relators were willing that that Court should pass upon the statute in question **as** affecting the contract with The Berlin Iron Bridge Company, but we do not believe that this Honorable Court will decide questions not raised in the Record.

If this Court, however, should proceed to a consideration of the assignment of errors in relation to the alleged contract with The Berlin Iron Bridge Company, we contend:

A.

That the contract was never a valid contract.

We discussed this point at length in our brief heretofore submitted to this Court and the State Court; but, as the State Court decided the case upon other grounds, acknowledging the existence of the alleged contract for the purposes of the argument, we may safely confine our argument to a review of the judgment of the State Court.

B.

It is admitted in the Record, page 49, paragraph 7, that the alleged contract, valid or invalid, was surrendered to the State by the party in whose interest it was written as fully paid and satisfied, and the State was then and there released and discharged from any and all claims of every name and nature arising thereunder. (R., pps. 51-52, Exhibits "10" and "11.")

The claims of the plaintiff in error in relation to this contract were given no weight by the Connecticut Court, and we submit that there is no error in the reasoning of that Court. (See Opinion of the State Court, Record, p. 72.)

II.

With regard to the second proposition, upon which the plaintiff in error lays great stress, viz.:

That the State Court erred in not holding that said Act and orders referred to deprived the town and taxpayers of Glastonbury of their property without due process of law, and deprived said town and taxpayers of the equal protection of the law, in violation of Sec. 1 of Art. 14 of the Constitution of the United States, we contend that:

The Connecticut Supreme Court gave no weight whatever to the claim that the acts and orders referred to were in violation of Sec. 1 of Art. 14 of the Constitution of the United States. The dissenting opinion is based wholly upon the proposition that the public act in appointing the Commissioners for the Connecticut River Bridge and Highway District in the first instance contravenes the inherent right of a Connecticut town to choose its own ministerial officers.

A question controlled entirely by the fundamental law of Connecticut and the interpretation of that law by the Connecticut Court is, we contend, final.

See authorities and argument in brief heretofore submitted, pages 21 to 41, inclusive.

The brief of the plaintiff in error contains some sweeping assertions of fact to the effect that the property of the town of Glastonbury is being taken without due process of law, but we fail to find anything in the Record to warrant these assertions.

In part III of his brief the plaintiff in error has reviewed the minority opinion of the Connecticut Court, and has attempted to present to this Court the minority opinion as a better interpretation of the Constitution of Connecticut than is the majority opinion.

We must again insist that the questions, whether the towns of Connecticut created the State or the State created the towns, or whether there exists in Connecticut a dual sovereignty of town and State, are questions for the State Court to decide, and in our argument on this point submitted to the State Court and printed with our brief submitted to this Court in April, 1897, we have cited an unbroken line of decisions by the Connecticut Court, which hold most emphatically, that the town is the creature of the State having no inherent sovereign rights. See brief heretofore submitted to Connecticut Court, and printed with brief submitted to this Court, p. 21.

We submit that the doctrine of the dissenting judges is without precedent and utterly impossible of application, because it recognizes the existence of two absolute sovereigns over one and the same territory in relation to the manner and means of maintaining the public highways of Connecticut.

In the case at bar the district required to maintain the bridge in question is comprised of five towns, and we may assume that they are all opposed to the operation of the Public Acts in question.

If the State may impose the duty of maintaining the bridge in question upon this district, but must leave the performance of that duty to town-appointed agents, and the towns neglect or refuse to appoint such agents, we have then no one to put the law in operation, and, consequently, no one to compel to act, and no one to punish for not acting.

The sanguine counsel for the plaintiff in error may have abundant faith, that the towns would not refuse to obey a public act. It is enough for us to suggest, that should the towns in their alleged sovereignty refuse to act, the State would be impotent, and we trust that if any such state of doubt and conflict is to be imposed upon Connecticut, this Honorable Court will let the Supreme Court of Connecticut take the first step.

III.

DUE PROCESS OF LAW.

Upon this point we call the attention of this Honorable Court to our brief, filed in April, 1897, pp. 23 to 44, inclusive, and our claims there made that the decision of the State Court should stand.

See, also, *Pennoyer vs. Neff*, 95 U. S., 714.
Ex parte Wall, 107 U. S., 265.
Pearson vs. Yewdall, 95 U. S., 294.
Arrowsmith vs. Harmoning, 118 U. S., 194.
Hilton vs. Merritt, 110 U. S., 97.
Campbell vs. Holt, 115 U. S., 620.
Missouri Pacific R. Co. vs. Humes, 115 U. S., 512.
Fox vs. Cincinnati, 104 U. S., 783.
Turner vs. New York, 168 U. S., 90.
Hodgson vs. Vermont, 168 U. S., 262.
Castillo vs. McConnico, 168 U. S., 674, 683.

This question is many times propounded in the plaintiff's brief, but we beg to call the attention of the Court to some of the assertions of fact there made and upon which the plaintiff's argument in this regard is based.

On page 42 of the brief of the plaintiff in error, we find the following:

"We are not denying the taxing power of the State. They have not laid a tax. They have set state officers over the towns to simply demand so much money, etc."

And again, on page 47, we find the following:

"The present law does not impose a tax. It is not the exercise of the taxing power. It simply declares that certain towns shall *lay taxes*."

It is not necessary to again refer the Court to the Act of 1895, to disclose the startling variance between the language and object of that act and the assertions of counsel just quoted.

On this very point on page 38 of the brief for the plaintiff in error, we find the following admission:

"True, there is a special provision in the Special Act of 1895, Record, p. 54, Section 4, that the towns shall provide for the expense *in the tax levy*. But how can the treasurer compel them to do it? If a town meeting be called can the treasurer compel the voters to *lay the tax*?"

And again, on page 39 of their brief, we find the following:

"The Court will notice that the Special Act of 1895 does not impose a tax upon the towns, and provide methods for the collection of it." "*It simply provides that a tax shall be laid.*"

Per contra the Court will notice that the Special Act of 1895 *does* impose a tax upon the towns, not in terms but in effect, and provides methods for collection of it. The exact provision of the statute is this: "And said towns are hereby authorized and directed to provide for such payments in the annual tax levy of said towns." (Record, page 54.) From which it clearly appears that the proportion of expense for this public work assigned to each town by the legislative act is to be collected through the ordinary statutory provisions relating to

town expenses, as provided for in the annual tax levy of said towns, that is, the ordinary machinery already in operation for the collection of taxes to provide for ordinary town expenses, is made use of to provide for the expenditure in question.

But, however that may be, is it not apparent that the counsel for the plaintiff fail to distinguish between the purpose and object of the statute and the machinery provided for its operation?

The sole errand and purpose of the Act of 1895 is to secure the maintenance of a bridge for the use and benefit of the public.

The expense incident to the maintenance of this bridge is put upon a district specially benefited. This district is composed of five towns, and these towns are expressly directed by the statute to raise their several portions of the expense "in the annual tax levy of said towns."

Confessedly, we have here a clear and explicit exercise of the taxing power resting in the sovereign state and to which, it is admitted, all municipalities created by the State are subject.

In commenting upon some of the authorities cited by us in our brief submitted to the Connecticut Court, counsel for the plaintiff in error on page 49 of their brief make this concession:

"These cases establish one very plain proposition. Burdens may be placed by the legislature upon counties, cities, and towns. Bridges and highways may be assigned to the charge of the people in particular localities. Not one of them sustains the point that local self-government can be taken away in the process of imposing these burdens."

Is not this a clear concession that the ultimate object and the initial purpose of the statute are in harmony with the Constitution and decisions of the Courts?

And does it not seem clear that the objections raised by the plaintiff in error relate wholly to the agency or machinery employed by the Legislature to put the law in motion?

And upon this point is it not manifest that the plaintiff in error entirely loses sight of the fact that we are dealing with a new corporation in which town lines are used simply to give geographical limits to that corporation. We have shown that the very thing done by Connecticut in the *Acts* of 1895 has been done many times by other States, and in every instance the Courts have held that the manner and methods of accomplishing the purposes of such statutes lie wholly within the discretion of the several legislatures. To hold to the contrary would be to concede a right with no power to exercise that right. See citations in brief heretofore submitted to this Court and the Connecticut Court, pp. 5 to 27 inclusive.

In the case at bar a district is formed and Commissioners are appointed to represent that district, *not the towns comprising it*. Town officers are in no way involved or disturbed.

It is true the Constitution of Connecticut provides that certain town officers shall be elected by ballot, but it must be equally true that the Legislature is free to prescribe the manner in which any and all other public officers or agents shall be chosen.

We have in Connecticut to-day Commissioners without number appointed by the General Assembly to represent local interests of a public nature. For instance, the County Commissioners are appointed by the General Assembly to represent and manage the affairs of the several counties of the State. A county is a district composed of certain towns, created and changed at will by the Legislature.

Section 2674 of the General Statutes of Connecticut (see appendix) gives to such County Commissioners full power to

repair any defect in the highways of the towns comprising the counties, and they may issue a warrant against the selectmen of the towns or bring an action of debt against the towns for the collection of any expense so incurred.

In such cases the right of local self-government guaranteed by the Constitution is in no way curtailed. All the towns are represented in the General Assembly, and to their representatives the people have, in their Constitution, delegated and granted all legislative power, which must include all appointive power where there is no express provision that a public agent named shall be chosen by ballot.

It is no answer to say that some of the Commissioners appointed by the Legislature represent the State, as the Bank, Railroad, Insurance, and Highway Commissioners. The State is composed of towns and the inhabitants of towns, precisely as the bridge district in question is composed of towns and inhabitants of towns.

The point raised against the administrative provisions of the law in question, viz., that no tax is actually laid, seems to be absurd.

The inconsistency of the learned counsel for the plaintiff in error is, we think, made very apparent by this claim.

The law directs the towns to raise the money needed "in the annual tax levy of said towns."

Here, surely, local self-government is in no way infringed, neither is any doubt left as to the duty imposed, but it seems to be claimed that the act should have gone further and laid the tax on the grand lists of the towns.

Is not this a clear admission that the process of the law in question is due and complete, provided the town obeys it.

On page 40 of the brief of the plaintiff in error we find the following sentence: "The voters of the town may refuse to lay the tax or supply the treasurer with a dollar," and again on page 38, "If a town meeting be called, can the treasurer compel the voters to lay the tax?"

Do the counsel here contend that there is not due process of law, because the statute having clearly prescribed a duty does not then proceed to lay and collect an arbitrary tax, ignoring local officers and the vote of the inhabitants? If so, what of their former and oft-repeated claims that the selection of the Commissioners should have been left to the voters of the towns composing the district, and if there is danger that the towns will refuse to lay the tax in obedience to the statute, we again call the attention of this Honorable Court to the probable result of leaving the appointment of the Commissioners to the vote of the towns composing the district.

We submit that the only concrete notion of due process of law which the learned counsel seem to make clear in their argument is, that nothing is due process of law that does not give to the objecting town a clear and definite way to defeat the operation of the statute, in so far as it relates to the appointment of the Commissioners.

And, with regard to the matter of expense, nothing is due process of law that gives to the town authorities any part in laying and collecting the necessary tax.

On page 4 of the plaintiff's brief, the complaint is, that the taxpayers of the district are not consulted in the appointment of Commissioners, and on page 40 the complaint is that, if the laying of the tax be left to the taxpayers they may refuse to act, and the tax should have been laid by the State.

On page 18 of the same brief, in discussing the Act of 1893 which appointed Commissioners to represent the State

in the care and control of the highway in question, the following argument is advanced in defense of this very method:

"The State in determining whether or not the bridge should be rebuilt must necessarily reach such determination through the judgment of some agents, and what more natural and reasonable mode could the State adopt than to submit the whole question to the jurisdiction, investigation, and determination of the Board of Commissioners specially appointed for the care, maintenance, and control of the bridge in question."

Now we fail to see wherein the inhabitants of the district in question do not have just as much voice in the administration of the law of 1895 as the inhabitants of the State, which is simply a district of larger territory, had in the administration of the law of 1893.

The Commissioners are appointed by the Legislature in both instances, and their duties are the same in both instances.

In the one case the expense is put on all the towns, *i. e.*, the State, and in the other upon the five towns specially benefited.

In both cases the inhabitants as separate individuals are subject to the law of the land as promulgated by their representatives in general assembly convened, and in neither case do they vote directly by ballot for the Commissioners.

Granting the power of the Legislature to create the district in question, and put the burden of the expense upon the towns included in such district, it appears that the same process of law is applied to the inhabitants and taxpayers of the district in question, as was applied to the inhabitants of the State by the Act of 1893, which act the plaintiff highly approves.

The case of *Mobile County vs. Kimball*, 102 U. S., p. 691, turns upon a state of facts almost precisely like those in the present record. See also *Hagar vs. Reclamation District*, 111 U. S., 701.

We have printed largely from this case in our brief heretofore filed, and we again call the attention of this Honorable Court to this case as conclusive upon all the constitutional questions claimed to be raised.

In this supplemental brief we have not attempted to do more than touch briefly upon a few of what seem to us to be illogical, if not unwarranted, claims contained in the brief for the plaintiff in error, filed in April, 1897.

We wish to call the attention of the Court to a statement on page 2 of the Brief of the Plaintiff in Error, filed April, 1897 :

"Prior to 1887, the State of Connecticut had the care, maintenance, and control of the bridge and causeway described in the complaint."

And on page 56 of the same brief, the same statement is reiterated in this language :

"In 1887, the Legislature passed an Act making the highway in question a free public highway. Before that time the State had always been charged with the maintenance of this highway, and had maintained it either by itself or through its own agents."

There is no authority whatever in the record for stating that the State of Connecticut maintained said bridge and causeway previous to 1887 ; and as a matter of fact, the State of Connecticut never maintained said bridge and causeway for one single moment previous to 1887, nor since that time, except for about two years when the statute of 1893 was in force, which statute is quoted on page 9 of the Plaintiff's Brief and on page 7 of our brief, filed April, 1897.

The bridge and causeway in question were constructed and owned by The Hartford Bridge Company, a private corporation chartered by the Legislature of Connecticut as a toll bridge company, and the ferries in the vicinity were discontinued by legislative act in order to give The Hartford Bridge Company the benefit of the travel. These facts appear in the report of *East Hartford vs. Hartford Bridge Company*, 10 Howard, 512, already quoted to another point.

Also in case of *Hartford Bridge Company vs. Union Ferry Company*, 29 Conn., 210.

The Hartford Bridge Company always maintained the bridge and causeway until its property was condemned under the Act of 1887, "Exhibit X," Record, page 60.

It has always been the established policy in Connecticut to place the burden of maintaining highways and bridges on towns. The plaintiff in error correctly states the fact so to be on page 4 of his brief, where in speaking of the Act of May 24, 1895, Exhibit 8, he says:

"Up to this time the General Assembly had never before attempted to take care of or maintain any of the highways in the State by its own appointed agent. It had often imposed duties upon towns relative to highways, some of them of an extraordinary nature, but had uniformly left the town to discharge those duties by their own chosen officers. Such was the course pursued by the law of May 19, 1897."

We believe that the opinions of this Honorable Court, cited in our brief heretofore filed, upon all the points in issue, and the learned and logical opinion of the Supreme Court of Connecticut in sustaining our position upon every point raised in the record, clearly warrant the affirmation of the judgment of the Connecticut Court.

Respectfully submitted,

LEWIS SPERRY,

GEO. P. MCLEAN,

AUSTIN BRAINARD,

Counsel for the Defendant in Error.

April, 1898.

APPENDIX.

General Statutes of Connecticut, Section 2674:

" Whenever any town shall neglect to keep any public road within such town in good and sufficient repair, or whenever the selectmen of any town shall fail to remove or cause to be removed any encroachments upon any highway in such town, the county commissioners of the county in which such road or highway is, or a majority of them, upon the written complaint of any six or more citizens of this State, under oath and endorsed and approved by the State's attorney in said county, after proper inquiry made by him, shall appoint a time and place when and where all persons interested may appear and be heard upon the propriety of such repairs, or of the removal of such encroachments, and shall give notice thereof to the first selectman of said town and to the person or persons maintaining such encroachments, by causing a true and attested copy of said complaint, accompanied with a summons notifying the said parties of said time and place, to be left with each of said parties, or at their usual place of abode by some proper officer, at least six days inclusive before the day appointed for the hearing; but before issuing any summons on said complaint said commissioners shall require of the complainants a sufficient bond for costs to the adverse parties, and may at any time thereafter require further bond or bonds for such costs. If the commissioners shall find that such road or highway ought to be repaired, or that such encroachments ought to be removed, they shall order the selectmen of such town to cause said road or highway to be repaired and said encroachments to be removed, and shall prescribe the manner and the extent of such repairs, and of the removal of such encroachments, and the time within which the work shall be done, and may for reasonable cause extend such time.

" If said orders be not complied with, the commissioners shall cause such repairs to be made and such encroachments to be removed at the expense of the county, and upon the completion of the same may grant or issue a warrant in favor of the county, against the selectmen of such town to collect the amount of money so expended, with the additional fees and costs of the commissioners, or may bring suit against such town in the name of the county treasurer, to collect such amount, with said additional fees and costs of the commissioners."



Statement of the Case.

WILLIAMS, TREASURER, v. EGGLESTON.¹

ERROR TO THE SUPREME COURT OF ERRORS OF THE STATE OF CONNECTICUT.

No. 210. Argued April 19, 20, 1898.—Decided May 2, 1898.

The legislation of the State of Connecticut whereby the franchise and property of a company which had constructed and was maintaining a toll bridge across the Connecticut at Hartford were condemned for public use, and the cost was apportioned between the State and the town of Glastonbury and four other municipal corporations in proportions determined by the statutes, and the proceedings had under this and subsequent legislation set forth in the statement of the case and the opinion of the court, did not violate any provisions of the Federal Constitution.

For three quarters of a century prior to 1887 the Hartford Bridge Company had under a charter from the State, (Priv. Laws Conn. vol. 1, p. 254, Resolve of October, 1808), maintained a toll bridge over the Connecticut River at the city of Hartford. It also maintained on the east side of the bridge and connected therewith a causeway across the lowlands adjacent to the river.

On May 19, 1887, the legislature of the State passed an act making said bridge and causeway a free public highway, and providing for the condemnation of the franchise and other property of the bridge company. (Pub. Acts Conn. 1887, chap. 126, p. 746.) Proceedings were directed to be instituted in the Superior Court of the county of Hartford for ascertaining the value of the property, determining the towns benefited by the establishment of the public highways, and apportioning the assessed damages. In this proceeding the damages assessed to the bridge company were \$210,000, and apportioned between five towns, as follows: To the town of Hartford, ninety-five two hundred and tenths; East Hartford, sixty-six two hundred and tenths; Glastonbury, twenty-five two hundred and tenths, and the towns of South Windsor and Manchester each twelve two hundred and tenths.

¹ This case, as reported in the Connecticut Reports, was entitled *Morgan G. Bulkeley et al. v. Samuel H. Williams, Treasurer.*

Statement of the Case.

The State, however, appropriated out of its treasury 40 per cent of the entire amount, to wit, \$84,000, leaving the balance to be paid by these several towns, and such sums were paid. The act also provided that this public highway should thereafter be maintained by the towns assessed in proportion to their assessments, and that the first selectman of each of said towns should become *ex officio* member of a board, constituted a body politic and corporate, and charged with this duty of care and maintenance.

On June 29, 1893, the legislature passed an act providing that said bridge and causeway should thereafter "be maintained by the State of Connecticut at its expense;" and that the Governor, with the consent of the senate, should appoint three commissioners, who should constitute "a board for the care, maintenance and control" of such bridge and highway. (Pub. Acts Conn. 1893, ch. 239, p. 395.) The bridge was a covered wooden bridge, which had been in existence for many years. On November 13, 1894, that board, acting through a majority of its members, made a contract with the Berlin Iron Bridge Company for the construction of a new bridge to cost \$275,900. Some work had been done and some material furnished by the company, when on May 17, 1895, the old wooden bridge was entirely destroyed by fire. A week thereafter, and on May 24, 1895, the legislature passed an act (Pub. Acts Conn. 1895, ch. 168, p. 530) repealing the act of June 29, 1893, and directing that thereafter the five towns which had been assessed for the benefits accruing from the establishment of the public highway should maintain that highway, each of them bearing the share of the expense thereof fixed in the assessment proceedings. By the same act a commission was appointed to hear and determine all legal claims and demands (that of the Berlin Iron Bridge Company being specially named) arising under or by virtue of any contract made and executed by the board appointed under the act of 1893. The act provided that if the award of such commission was less than \$40,000 the comptroller should draw his warrant on the treasurer for the amount thereof, to be paid upon the delivery of proper receipts, releases and discharges. It also

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provided that if any party, particularly the Berlin Iron Bridge Company, should not be satisfied with the decision of said commission it might within three years commence and prosecute a suit against the State in the Superior Court of Hartford County for any legal claim, debt or demand arising under or by virtue of any valid contract made and executed by said board, and that in any event such Berlin Iron Bridge Company should be entitled to recover for all material furnished and all expenses of every kind actually incurred under said contract, including therein all legal and personal expenses; that on final judgment being rendered in such suit the comptroller should draw his order on the treasurer for the amount of the judgment; and further, if the contract which had been entered into should be declared valid and binding, the comptroller should carry out and complete the contract according to its provisions and draw his orders on the state treasurer for the cost thereof. Under this act the Berlin Iron Company presented its claim to the commission, which, on December 7, 1895, awarded to it the sum of \$27,526. On December 13, 1895, the directors of the Berlin Iron Bridge Company voted to accept this award, and on the same day the company received the money and executed its release in the following words:

“\$27,526. HARTFORD, CONN., December 13, 1895.

“Received of the State of Connecticut the sum of twenty-seven thousand five hundred and twenty-six dollars in full of award made on the 7th day of December, 1895, by Hon. Dwight Loomis, Hon. Benj. P. Meade, comptroller, and Hon. George W. Hodge, treasurer of the State of Connecticut, acting as a commission constituted by chapter 168 of the Public Acts of 1895, and all other claims presented by this company to said commission are hereby withdrawn, and this payment is received in full satisfaction and discharge of all claims and demands of every nature which this company has or ought to have, arising under or by virtue of any contract made and executed by the commission appointed under chapter 239 of the Public Acts of 1893 with this company, and the within contract is hereby surrendered to the State of Connecticut.”

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On June 28, 1895, the legislature passed an act (Special Acts Conn. ch. 343, p. 485), the first section of which is as follows:

"SECTION 1. That the towns of Hartford, East Hartford, Glastonbury, Manchester and South Windsor be, and they are hereby created a body politic and corporate, with power to sue and be sued under the name of the Connecticut River bridge and highway district, for the construction, reconstruction, care and maintenance of a free public highway across the Connecticut River at Hartford and the causeway and approaches appertaining thereto, as described in a decree of the Superior Court of Hartford County, passed on the 10th day of June, 1889, in which decree said highway was laid out and established."

It also created a board of commissioners for such district, to consist of eight members, four from the town of Hartford and one from each of the other towns, who were given authority to maintain such free public highway and to erect new bridges along or upon said highway, to reconstruct, raise and widen the causeway and approaches appurtenant thereto or a part of said highway, at the expense of the towns composing the district. In case of a vacancy in the board the vacancy was to be filled by the town in which the retiring member resided. This board was authorized to issue the bonds of the district, if need be, to an amount not exceeding \$500,000 for the construction of a new bridge or causeway. The burden of construction and maintenance of this public highway was distributed in a proportion different from that named in the original assessment proceedings, the town of Hartford being required to pay seventy-nine one hundredths, East Hartford twelve one hundredths and Glastonbury, Manchester and South Windsor each three one hundredths. For all expenditures the board was directed to draw warrants upon the several towns, and such orders were declared sufficient authority for the treasurer of each of said towns to pay the amounts named therein, and the board was authorized to apply to any court of competent jurisdiction for proper writs to compel the enforcement and execution of its orders. The board, having expended the sum of \$500 in the ordinary support and main-

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tenance of this highway, on September 14, 1895, passed a resolution apportioning the amount, and drew a warrant on the treasurer of the town of Glastonbury for the sum of \$15, its proportion of the sum expended. The treasurer of that town refused to pay this order, whereupon, on October 16, 1895, the board presented an application to the Superior Court of Hartford County for an alternative writ of mandamus against him. The writ was answered by the treasurer, and in his answer he set forth, among other defences, that the act of May 24, 1895, repealing the act of June 29, 1893, was in violation of the Constitution of the United States, section 10, Article I, because it impaired the obligation of a contract; that the proceedings of the board were also in violation of the Fourteenth Amendment to the Constitution of the United States, because they deprived the towns and the citizens thereof of their property without due process of law, and denied to them the equal protection of the laws. The Superior Court rendered judgment *pro forma* in favor of the board, and directed the issue of a peremptory writ of mandamus. On appeal to the Supreme Court of the State this judgment was affirmed, June 25, 1896, *State ex rel Bulkeley v. Williams, Treasurer*, 68 Conn. 131, whereupon this writ of error was sued out.

Mr. Lewis E. Stanton and *Mr. John R. Buck* for plaintiff in error. *Mr. Olin R. Wood* was on their brief.

Mr. Lewis Sperry for defendant in error. *Mr. George P. McLean* and *Mr. Austin Brainard* were on his brief.

MR. JUSTICE BREWER, after stating the case, delivered the opinion of the court.

Inasmuch as the plaintiff in error, when sued in the state court, specifically set up certain sections of the Federal Constitution as a bar to the proceedings against him, and the judgment of the state court was that they constituted no such bar, it is not open to question that this court has jurisdiction, and the motion to dismiss must therefore be overruled.

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The first contention of plaintiff in error is that the contract of November 13, 1894, made between the state board and the Berlin Iron Bridge Company, was a valid contract, and that the two acts of May 24, 1895, and June 28, 1895, together with the orders and proceedings of the board of commissioners thereunder, are in violation of the tenth section of Article I of the Federal Constitution, because they impair the obligation of that contract. A sufficient answer to this contention is, that the contract, if valid—and upon that we express no opinion—was between the State of Connecticut and the Berlin Iron Bridge Company, and that they have fully settled all differences in respect thereto. The parties to a contract are the ones to complain of a breach, and if they are satisfied with the disposition which has been made of it and of all claims under it, a third party has no right to insist that it has been broken. Counsel for plaintiff in error, conceding that an entire stranger cannot take advantage of any breach, insist that the town, though not a party to the contract, had an interest in its execution, for if it had been executed and the new bridge constructed and paid for by the State, the town would not now be under any obligations to assist in the construction of the new bridge. But this results, not from the mere adjustment between the State and the Berlin Iron Bridge Company, but by reason of the fact that the legislature, in the exercise of its unquestioned powers, has seen fit to cast the burden of the construction of a new bridge—which, as claimed, it had once assumed—upon the towns. Even if the contract had been carried into effect, according to its terms, the legislature might, at the time of passing the act of 1895, have provided that the cost of such construction should be borne by the towns specially benefited thereby. It is not the breach of any contract, but an independent act of the legislature which casts the burden on the town of Glastonbury. The town is, therefore, an entire stranger to the contract, and this contention must be overruled.

Again, it is insisted that the plaintiff in error is denied the equal protection of the laws because these five towns are put into a class by themselves, organized into a single municipal

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corporation, and separated from other towns in the State by being subjected to different control in respect to highways. But this overlooks the fact that the regulation of municipal corporations is a matter peculiarly within the domain of state control; that the State is not compelled by the Federal Constitution to grant to all its municipal corporations the same territorial extent, or the same duties and powers. A municipal corporation is, so far as its purely municipal relations are concerned, simply an agency of the State for conducting the affairs of government, and as such it is subject to the control of the legislature. That body may place one part of the State under one municipal organization and another part of the State under another organization of an entirely different character. These are matters of a purely local nature, in respect to which the Federal Constitution does not limit the power of the State. "Whether territory shall be governed for local purposes by a county, a city or a township organization, is one of the most usual and ordinary subjects of state legislation." *Kelly v. Pittsburgh*, 104 U. S. 78, 81. See also *Forsyth v. Hammond*, 166 U. S. 506, 518, 519, and cases cited in the opinion; 1 Dillon on Municipal Corporations, 4th ed. Vol. 1, p. 52, and following.

It is further contended that the acts of May 24, 1895, and June 28, 1895, are in conflict with that portion of the Fourteenth Amendment which forbids the depriving of any person of life, liberty or property without due process of law, because, first "they deprive the town of the right to perform its town duties by officers of their own choosing, which is contrary to the settled practice and law of the State, and arbitrarily destroys the right which those towns had before the constitution of Connecticut was adopted and which was not taken away by that instrument; and, secondly, because the acts provide for arbitrarily taking the property of the inhabitants of Glastonbury without proper notice of any proceeding under which the property is to be taken and without opportunity to be heard." Whatever may have been the practice of the State in the past it cannot be doubted that the power of the legislature over all local municipal corporations is unlimited save by the restrictions of the state and Federal constitutions; and

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that these acts in no way violate any provision of the state constitution is settled by the decision of the state Supreme Court. *Backus v. Fort Street Union Depot Company*, 169 U. S. 557, 566, and cases cited. It is true there was a division of opinion between the members of the state Supreme Court, but such division, although a close one, does not prevent the opinion of the majority from becoming the decision of the court, and as such conclusive upon us. When the state court decides that municipal corporations within the territorial limits of the State are subject to the control of the state legislature, and that its act in creating for certain purposes a new corporation, and merging therein five separate towns, was valid, this court cannot hold that the state court was mistaken in its construction of the state constitution or in its declaration as to the extent of the power of the legislature over municipal corporations.

Neither can it be doubted that, if the state constitution does not prohibit, the legislature, speaking generally, may create a new taxing district, determine what territory shall belong to such district and what property shall be considered as benefited by a proposed improvement. And in so doing it is not compelled to give notice to the parties resident within the territory or permit a hearing before itself, one of its committees, or any other tribunal, as to the question whether the property so included within the taxing district is in fact benefited. *Spencer v. Merchant*, 125 U. S. 345, 356; *Parsons v. District of Columbia*, 170 U. S. 45. It should be noticed that no question is presented as to the necessity of notice before any property tax is cast upon the citizen. The only question is as to the power of the legislature to cast the burden of this improvement upon the five towns, towns which have been already judicially determined to be towns benefited thereby. Although the apportionment made between the towns was not that determined by the judicial proceedings, yet it was one of which certainly the town of Glastonbury cannot complain, for the judicial apportionment was as to it reduced by the legislative act. In casting this burden upon the towns the legislature did not proceed without a hearing from the

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towns, for their representatives were in the legislature and took part in the proceedings by which the act was passed. So they had an opportunity to be heard, if such hearing was necessary, prior to the enactment of the law. These are all the questions made by counsel. We see nothing in the proceedings which can be said to be in violation of any provisions of the Federal Constitution, and therefore the judgment of the Supreme Court of Errors of Connecticut is

Affirmed.
